

# CHINA STUDIES REVIEW



*volume*

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2022

## *Featuring Articles by*

Justin Feng

Abena Oduro

Ben Phillips

Emma Shleifer

Joseph Vaughan

Beth Wootten



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# CHINA STUDIES REVIEW

*The SAIS China Studies Review is a publication of SAIS China Global Research Center, at the Johns Hopkins Paul H. Nitze School of Advanced International Studies.*

*The Review publishes interdisciplinary work by graduate students conducting research on China, including history, political science, economics, policy, security, and area studies.*





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## *Letter from the Editor*

Since the previous edition of the SAIS China Studies Review was published, the People's Republic of China has faced a series of domestic and international challenges which have the abilities of Xi Jinping and the Chinese Communist Party to maintain stability while expanding influence. A property sector crisis sparked by the financial struggles of development giant Evergrande heightened fears surrounding the slowing growth of China's economy. As global demand for consumer goods rose, an acute energy shortage caused months of rolling blackouts, eventually increasing coal production to record daily highs and compromising decarbonization goals in the process. An otherwise successful Winter Olympics was tinged by controversy due to the absence of foreign emissaries who boycotted the event in protest of the human rights violations in Xinjiang and elsewhere. Over the last few months, China has been forced to maneuver through the international backlash against its close ally Russia's invasion of Ukraine.

All of these events occurred amidst the third year of the global covid pandemic. Despite the initial success of its stringent zero-covid policy, China has been unable to stamp out more infectious variants of the disease. China's impressive 2021 economic growth has stagnated and regressed. Waves of illness and associated restrictions in major cities like Shanghai have brought international scrutiny to the lockdown conditions, caused a swell of domestic frustration. This comes at a critical moment in Xi's career, with the highly anticipated 20th National Congress of the Chinese Communist Party on the horizon. Xi is

expected to retain his role as General Secretary of the Chinese Communist Party and as President of the country. His allies in the regime elite will fill an even more significant portion of top leadership positions.

The 8th edition of the China Studies Review features an exceptional group of student authors who provide thoughtful and in-depth analyses of China's domestic environment and growing influence abroad. The China Studies Review team has curated a set of six essays that we hope will advance the understanding of Chinese history, politics, economics, and policy generally for both the experienced and novice China-watchers alike.

The Review begins with a piece by **Beth Wootten** that examines the ways Mongol ethnic identity and intergroup relations are affected by targeted government policies in China and Mongolia. Inspired by protests in 2020 over curriculum changes in the Inner Mongolian Autonomous Region, Wootten analyzes what identity is fundamentally and applies this analysis to historic policies affecting ethnic Mongol populations up to current day engagement. Next, **Joseph Vaughan** evaluates the conflicting narratives regarding China's accession to the World Trade Organization (WTO) through a case study on the development of the Chinese automotive industry. The piece focuses on the Western claims of malfeasance and, conversely, how China has reportedly reconciled its agenda with WTO standards. Continuing on the subject of trade, **Ben Phillips** provides a complementary perspective on China's use of Foreign Trade Agreements (FTA) as tools to pursue China's foreign policy agenda. Phillips analyzes the motivations for forming the FTAs and the subsequent behavior once the agreements are secured, providing insight into how China leverages economic governance to gain political influence.

Next, **Abena Oduro** addresses the implementation of policies addressing Corporate Social Responsibility (CSR) by Chinese state-owned enterprises in Africa. In her piece, Oduro focuses on Ghana and Kenya in her evaluation of CSR efforts, identifying areas of weakness and potential remedies. **Justin Feng** then evaluates the economic reorienting Dual Circulation strategy, which aims to increase domestic consumption while continuing to expand export production. Feng evaluates the current feasibility, dives into several challenges facing the strategy, tracing the passage of Dual Circulation through China's policy making process, offering his expectations for the trajectory of the strategy. The 8th edition closes with a comparison of how Facebook and Tencent approach data privacy laws in a piece by **Emma Shleifer**. In her case study, Shleifer provides a literature review of the subject, breaks down assumptions often made about Chinese data laws, compares how Facebook and Tencent try to influence the legal landscape of data laws, and analyzes the ways each company's approaches differ.

I am deeply grateful for the student authors, editors and SAIS faculty, whose hard work made this publication possible. To readers, we appreciate your interest and would love to hear from you with any thoughts, questions, or concerns. You can reach us at [saischinastudiesreview@gmail.com](mailto:saischinastudiesreview@gmail.com). We accept short submissions for our blog on a rolling basis. We would love for you to contribute.

*Janice Li*  
*Washington, D.C.*

# *The Unfathomable Abyss: Neighboring and Identity of the Inner Mongols*

***Beth Wootten***

In the summer of 2020, news of protests in China reached Western media. Ethnic Mongols in the Inner Mongolian Autonomous Region (IMAR) were protesting changes in school curriculum with the implementation of newly “bilingual” education. How did this lesser-known region claim Western headlines, and why was this language policy so significant that many parents withdrew their children from schools in protest? At the root of these events is the question of Mongol ethnicity and the struggle of Mongols within China to maintain their unique identity and nationality status.

This paper explores how government policy has affected the identity of ethnic Mongols on both sides of the Chinese-Mongolia border and the impact of their identities on interactions between the two groups. With the border between the northern and southern parts of Mongolia delineated and closed for decades, cross-border ties slowly died out. Since contact between Inner Mongolia and Mongolia resumed after Deng Xiaoping’s reform and opening policy and the fall of the Soviet Union, the question remains as to how these Mongol peoples relate to each other. Do they continue to share the same identity? Have the Inner Mongols become “Sinicized” and the Mongolians “Russified”? And with the recent shift in minority policy by the Chinese Communist Party (CCP) towards assimilation of its ethnic minorities, what does it mean to be a Mongol in China now?

I begin with a theoretical analysis of “neighboring” and a survey of the meanings of ethnicity and nationality, in both English and Chinese. Next, I examine the historical national identity of the Mongols, laying out concrete examples of their unique culture and society. I continue with an examination of the Sino-Soviet split and the impact of Soviet Union and Chinese Communist policies on Mongol identity. Then, I apply my theoretical understanding to examine the relationship between Inner Mongols, Mongolians, and Han Chinese after reengagement, to see how policies have shaped their identities and their acts of neighboring. Finally, I examine China’s second-generation ethnic policies and the recent 2020 protests over Mongolian language instruction in light of my analysis.

In this paper, I will use “Mongol” to denote all peoples of Mongolian ancestry, “Inner Mongol” to denote Mongols in China,<sup>1</sup> who are primarily though not entirely located in the Inner Mongolian Autonomous Region (IMAR), and “Mongolian” to denote citizens of the country Mongolia. Although there are other terms and definitions used across papers, I will employ these in the interest of clarity.

## ***A Theoretical Analysis of Identity and Neighboring***

The evolution of identity—first individual, then familial and tribal, and finally national—is inextricably tied up with one’s relations with others. Although tribal and national identities are ostensibly based on similarities within the same group, these identities are more fundamentally based on a contrast with other groups that one interacts with. The neighboring person, family, and nation, utterly different and yet familiar because of daily contact, are crucial to shaping identity.

In his essay “Neighbors and Other Monsters,” Slavoj Žižek explores the neighbor as seemingly familiar and yet deeply

incomprehensible, a person encountered daily and yet utterly unknown. "Beneath the neighbor as my *semblant*, my mirror image, there always lurks the unfathomable abyss of radical Otherness, of a monstrous Thing that cannot be 'gentrified.'" Žižek continues, quoting Lacan: "The other is there qua absolute Other. Absolute, that is to say he is recognized, but is not known."<sup>2</sup> Recognizing a neighbor involves becoming aware of the Otherness beneath the familiar and understanding that it can never be comprehended.

Juan Zhang and Martin Saxer draw on Žižek's conception of the neighbor as familiar and yet radically different to explore the act of interacting with such neighbors, termed 'neighboring,' in everyday life. The act of neighboring is an "anthropological inquiry into relatedness, competition, and ways of being in a world in which communities become increasingly mobile and connected."<sup>3</sup> Neighboring is the way in which the Hegelian sublimation of Same and Other is unconsciously undertaken in daily life by individuals along the edges of communities.<sup>4</sup> This act of neighboring, seen in the Inner Mongol context, is their everyday interactions with both Han Chinese and Mongolians.

identity of oneself and one's clan is based on this abyss between self and other, as John Coakley explicates in his definition of an ethnic group:

*"An ethnic group is a large collectivity whose members are linked by certain cultural characteristics - including the sense of sharing a common past - which they and others see as **defining a social boundary between members and non-members of the group.**"<sup>5</sup>*

Creating this social boundary between those within and those without is the fundamental act of creating an identity. The other vital question concerning identity to disentangle is the distinction between ethnicity and nationality. This distinction affects individual and group identity and acts of neighboring, particularly in the Inner Mongols' case.

The question of whether Mongols, particularly those in Inner Mongolia, are merely an ethnic group or if they comprise a nation is at the heart of the CCP's second-generation ethnic policies and at the center of the concern over assimilation of the Mongol nation. The relationship between ethnicity and nationality is ambiguous, in both English and Chinese, and has broad political and social consequences.

*... by creating distance but also understanding through contrast, one makes the radical Other more familiar by incorporating the Other into the self. This is the act of creating an identity, of defining a social boundary between self and other.*

By recognizing the Other lurking beneath the semblance of Self in one's neighbor, by creating distance but also understanding through contrast, one makes the radical Other more familiar by incorporating the Other into the self. This is the act of creating an identity, of defining a social boundary between self and other. The creation of the

Max Weber, one of the fathers of sociology, defines ethnic groups as "those human groups that entertain a *subjective belief in their common descent* because of similarities of physical types or of customs or both, or because of memories of colonization and migration; this belief must be important for the propagation of group

formation.”<sup>6</sup> The essence of an ethnicity is the common belief of descent, whether there is any biological truth to ethnic markers or not.

In contrast to ethnicity, a nation is typically defined as a distinct population with a common territory, language, history, political pursuit, economy, and/or legal rights and duties.<sup>7,8</sup> A nation is often, though not always, an ethnically homogenous group that has political, economic, linguistic, and legal aspects. Nationhood is typically seen as synonymous with statehood, but this is not always the case: the Kurds in the Middle East and the Yoruba in western Africa are two such stateless nations.

In 1953, Joseph Stalin wrote that “a nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life and psychological makeup manifested in a common culture.”<sup>9</sup> This definition laid the foundation for the Soviet Union’s nationalities policy, which in turn drove the CCP’s formulation of its nationalities or *minzu* policy. Consequently, the CCP provided semi-autonomy for ethnic groups through autonomous regions and prefectures and protected the rights to use minority languages, practice religions, and maintain traditional economic ways of life. This significant autonomy effectively validated the idea of their distinct nationhood, particularly for the largest ethnic minorities.

As the decades have passed, Han Chinese have settled in vast numbers in minority areas, coming to dominate CCP leadership in most autonomous regions, thereby dominating local governance and political power. This shift towards an overwhelming Han majority raises the question of whether the Mongols remain a nation.<sup>10, 11</sup>

Parsing the distinction between ethnicity and nationality becomes more difficult when considering the Chinese. The commonly used word *minzu* (民族) means both ethnicity and nationality and is frequently

applied to identity issues. The ambiguity created by the modern-day Western distinction between ethnicity and nationality has led to the creation of neologisms like *zuqun* (族群), meaning an ethnic group or clan, as seen in the words *minzuqunti* (民族群体, ethnic group) and *zhongzuqunti* (种族群体, racial group). *Zuqun* is not a commonly used term, employed mainly for translations. This reflects the lack of consideration of the ethnicity-nationality distinction in previous eras. *Minzu* is frequently used to refer to ethnically defined groups – such as Mongol, Han, and Miao – but is also used in *zhonghua minzu* (中华民族), another neologism, which refers to the Chinese nation and to Chinese citizens, regardless of ethnic group.<sup>12</sup> This last term has been used by the Chinese state to emphasize the common nationality of all Chinese citizens.

Uradyn Bulag, an eminent scholar on Inner Mongolia, writes that maintaining a nationality requires supporting “the economic, social, and cultural preconditions, as well as the political powers that can meaningfully define the purpose and quality of their native speech.”<sup>13</sup> These specific attributes then – Mongolian language, steppe land, pastoral economy, and political action – are what stand between Mongols remaining a nation and being reduced to an ethnic group.

### ***Foundations of Mongol Ethnic Identity***

Mongol identity is constructed from several cultural markers, including common social customs, a shared historical narrative, familial relations, and the contrast of nomadic steppe-dwellers and sedentary farmers. Long before written history, Mongol identity coalesced, not on its own, but in contrast to the Han state. Owen Lattimore, a pioneer in China and Mongolia studies, explains how, as the “padi state” came to identify itself as a distinct proto-Han Chinese civilization, it also came to define the people beyond

its frontiers as “barbarians.”<sup>14</sup> Similarly, the nomadic tribes defined themselves in contrast to the padi states they interacted with.<sup>15</sup>

Nomadic pastoralism provided freedom from state control, as well as a lifestyle more suited to the less fertile steppe and desert. Mobile animal husbandry not only provided the most consumable calories from water-poor areas, but it also created a uniquely fluid social structure. Societies across Inner Asia formed based on kin and fictive-kin relations into clans and tribes, going through periods of tribal conflict and consolidation.<sup>16</sup> Turkic-Mongol khans led armies of horseback archers to either attack and raid settled agricultural states, or enter into so-called “tribunal” trading relationships with them.<sup>17</sup>

While these clans maintained the trappings of the agricultural state monarchies, they lacked the taxpaying populations and standing armies—Mongol cavalry were at the same time herders and hunters. Clans were more likely to be “redistributive, competitive feasting systems” maintained by the disbursal of benefits among tribe members.<sup>18</sup> When more centralized, they were what Barfield has termed “shadow-em-

incredibly diverse, allowing for the incorporation of former Han citizens and members of other nomadic tribes.<sup>21, 22</sup> At the same time, there was a clear distinction between Mongols and other tribespeople.

What distinguished the Mongols from other Turkic tribes was their unique mix of cultural artifacts, including the Mongolian language, shamanist and Buddhist religions, the history of the Mongol empire, and distinct customs. The distinct Mongol lineage and historical memory, based on Genghis Khan and the subsequent Mongolian empire, has had an outsized impact on Mongol identity. This is not surprising, as the Mongolian hordes, unified and led by Genghis Khan and his descendants, conquered much of Eurasia. His descendants controlled territory that reached as westward as modern-day Turkey and Romania. His grandsons conquered Song China and founded the Yuan Dynasty, before the Mongol empire splintered and faded in the fourteenth and fifteenth centuries.<sup>23</sup> This history is a significant part of Mongol identity even today, and Genghis Khan statues and imagery are found throughout Mongolia and Inner Mongolia.<sup>24</sup>

*Mongols have always identified themselves as distinct from the Chinese state with which they interact, despite the nebulousness that allowed Mongol society in the past to assimilate former Chinese citizens.*

pires” composed of “nomadic pastoralists, a predatory periphery designed to monopolize trading and raiding advantages at the edge of an empire.”<sup>19</sup> This nebulousness of Mongolian society, combined with a nomadic lifestyle and the lack of a societal center, kept them apart and free from the domineering Han state.<sup>20</sup> This nebulousness meant that Mongolian tribes were

Distinct Mongol customs have remained strikingly similar over the centuries and continue to define Mongol identity. Even for modern-day Mongols who no longer practice pastoralism, the nomadic way of life is foundational to Mongol identity. Today, wealthy Mongolians in the cities maintain gers in rural areas to vacation at, and rock bands still use the traditional



throat singing *Khöömei*, developed over the vast stretches of steppe.<sup>25</sup> Distinct customs that arose from the nomadic lifestyle continue to be practiced today, including herding animals, drinking *airag* (fermented mare's milk), and building *gers* (yurts).<sup>26</sup>

Mongols have always identified themselves as distinct from the Chinese state with which they interact, despite the nebulousness that allowed Mongol society in the past to assimilate former Chinese citizens. Nowadays, however, Mongolians identify themselves as wholly distinct from Inner Mongols, in large part due to Chinese and Russian states' manipulation of Mongol identity, to prevent pan-Mongolism and to assimilate the Mongols into the Mongolian and Chinese states.

### ***The Mongolian Split and the Sino-Soviet Split***

State manipulation of Mongol identity is not a new phenomenon, starting at least as early as the Ming dynasty in the sixteenth century. After the end of the Yuan dynasty, the Mongols fractured into different tribes and confederations, split mainly along East-West lines. During the Ming dynasty, the Chinese allied with some tribes against the others to provoke inter-tribal fights, diverting Mongol focus from raiding the Chinese settlements. The Manchu-led Qing dynasty greatly expanded Chinese territory, partly by defeating and integrating the Western Mongols on the western steppes. With this expansion, they divided the Mongols into Inner and Outer Mongolias.

The Qing government, and later Soviet and Chinese Communists governments, emphasized their own definitions of what a true Mongol was, building animosity between the groups. In Mongolia, the majority Halh tribe were held up as being the purest, with other tribes seen as less Mongol. The Soviet Union also forced Mongolians to switch their Mongolian standing script for the Cyrillic alphabet, impeding

written communication between them and the Inner Mongols in China.

In Inner Mongolia, the Qing and later the PRC emphasized the differences between the various Mongol tribes, such as differing dialects and political disputes, to divide them among themselves and prevent the threat of pan-Mongolism.<sup>27</sup> These groups were often played against one another as Han Chinese increasingly colonized their land.<sup>28, 29</sup> The USSR and PRC both imposed pastoral communes on the Mongols, eliminating individual ownership of animals and sedentarizing the herders on farms in lieu of traveling between longstanding ancestral pastures, thereby crystallizing social ties and reducing interactions between different groups of Inner Mongols.

In 1912, the Qing government opened 290,000 square kilometers of grassland in Inner Mongolia to agricultural cultivation, hoping to have Han Chinese "migrate and consolidate the frontier."<sup>30</sup> In response, more than 2.2 million new migrants arrived. The Mongol tribes, once adept at assimilating other various peoples into their midst, were soon overwhelmed by Han migrants. This inflow of Han Chinese significantly altered the character of Inner Mongolia and the lifestyles of the Mongols living there.

Inner Mongolia's opening quickly made the Mongols a minority, and more Han Chinese continued to move in throughout the Republican era and under the Communist government. Although ostensibly meant to benefit poor Han Chinese and increase GDP, this policy served in effect to gradually assimilate the Mongols into Chinese society. In 1947, Mongolians made up fourteen percent of the 5.62 million people in the IMAR, and by 1985 the region's population had grown to 20 million, with 13.5% registered as Mongol.<sup>31</sup> Due to the high rate of Mongol-Han intermarriage, successive generations of Mongols were increasingly biracial, with many of these citizens registering their ethnicity as Mongols for preferential treatment. Mongols

living in urban areas quickly became Sinitized, eating more grain and speaking only Mandarin.

Mongols, even those in rural areas, became increasingly sedentary and agricultural, whether due to lost land, desire for a higher wage, or other factors. By 1995, only 18.4% of rural Mongols were pastoral, two thirds were semi-agricultural, and 14.9% were solely reliant on agriculture.<sup>32</sup> The gradual loss of their defining economic way of life has been accompanied with the loss of defining territory, and the decreasing prevalence of Mongolian speakers. In addition to the shift from herding to farming, IMAR also experienced a significant shift from rural lifestyles to increasingly urban populations, fed by mining town booms and rapid industrialization.<sup>33</sup>

Mongols in Mongolia, on the other hand, remained the majority ethnicity, but were also heavily influenced by an external power. Under the Soviet nationality policy, Mongols were considered *ündesten* (a nation) and all other peoples considered *yastan* (nationality or people).<sup>34</sup> With this *ündesten* status, the Mongol people were privileged in the state, and the Halh Mongol tribe was deemed the purest Mongolian tribe, the ideal Mongols, and descendants of Genghis Khan.

With the Sino-Soviet split in 1956, Mongolia became physically divided by closed borders, and Sino-Russian animosities spread to the Mongols. In 1977, the New York Times reported that the two Mongolias despised each other, had tightly sealed borders, and rarely allowed family visits across the border. Inner Mongols accused the People's Democratic Republic of Mongolia of being a Soviet puppet regime, while Mongolians considered Inner Mongols to be spies for China.<sup>35</sup> It was only in 1984 when Chinese diplomats visited Mongolia and began a border survey that the two began to interact again, this time as separate peoples and neighbors, with distinct identities.

## *China-Mongolia Re-engagement*

In the 1980s and 1990s, two significant policy changes again affected Mongol identity. First, the Chinese government implemented affirmative action-style policies to benefit minority ethnicities in China, including quotas for university seats and government jobs and loosened restrictions on the one child policy. Due to high intermarriage rates, many of those who previously considered themselves Han and did not identify as Mongol utilized Mongol ancestry to register as Mongol and enjoy preferential treatment. No longer did Mongol identity necessarily correlate with Mongol language ability, customs, or a sense of being part of the Mongol community. One estimate shows that more than half of the increase in the broader minority population in the PRC between 1982 and 1990 was due to people shifting their ethnicity status to take advantage of preferential policies.<sup>36</sup> After 1980, an uptick in the percentage of the Mongol population in IMAR is observed, growing from 10% in 1980 to 20% in 2017. This reflects both higher Mongol birth rates and this broader definition of Mongol, both a result of the new policy.<sup>37</sup>

Second, China and Mongolia began to reengage diplomatically and economically, particularly with the beginning of Deng Xiaoping's policy of Reform and Opening. Much of the growing China-Mongolia trade (and Mongolian trade writ large) are centered in Inner Mongolia. Mongolia has generally imported similarly high shares of imports from Russia and China since 1995, while China has been Mongolia's largest export destination by far since 1996.<sup>38</sup> Approximately 80% of all Mongolian exports are now sold to China,<sup>39</sup> and almost 80% of China-Mongolia trade passes through Inner Mongolia.<sup>40</sup> To facilitate this trade, multiple border cities and numerous bi-national partnerships have sprung up along the border. Mongolia primarily exports animal husbandry products and minerals, while Inner Mongolia exports

agricultural products, manufactured goods, and increasingly high-tech and communications equipment.<sup>41</sup>

This increased trade has led to more frequent Inner Mongol-Mongolian interactions and business ventures, taking advantage of the shared language and historical background. Indeed, Mongolians are far more likely to partner with Mongol Chinese than with Han Chinese. Nasan Bayar frames the Inner Mongols as a bridge between Mongolians and Chinese, considering them to belong to both groups. In his essay “Can Kinship Come to the Rescue?” Bayar tells the story of an Inner Mongol who uses his Mongolian language skills to forge a connection with several Mongolian truck drivers, creating a profitable cross-border trade business. To Bayar, this ability to bridge the divide is a unique opportunity to bring the two countries, and the two

that Inner Mongolians are not true Mongolians, but “a hybrid Chinese-Mongolian race.” This sentiment is often the same as that towards Buryats, Kalmyks, Hazara, and other Mongol groups outside of Mongolia.<sup>43</sup> Shinjilt explains that the concept of being a Mongol, as defined in Mongolia, necessarily implies the geographic and political boundaries of Mongolia; it has been redefined as Mongolian citizenship and relies on political independence. Thus, noncitizens are excluded from Mongolness, no matter their ethnic identity.<sup>44</sup>

The Inner Mongols, in contrast, tend to look up to Mongolia as a homeland and as the Platonic ideal of Mongolness. They are far more likely to view Mongol identity as an ethnic, cultural classification that is far less rigid. At the same time, they prize their own situation, confident that living conditions are much higher in Inner Mongolia.<sup>45</sup> Mon-

*No longer did Mongol identity necessarily correlate with Mongol language ability, customs, or a sense of being part of the Mongol community.*

Mongol peoples, together.<sup>42</sup> Certainly this is a potential opportunity, and one that Beijing could exploit to strengthen China-Mongolia relations.

But Bayar also notes how this increased interaction between the two Mongol groups has illuminated their divisions. Halh supremacy continues in Mongolia, with multiethnic Mongols seen as lesser, and Inner Mongols derided as highly Sinicized. Although coworkers may view individual Inner Mongols as friends and co-ethnics, Mongolian society at large does not.

Since reengagement between Mongolia and China, the idea has spread in Mongolia

golian data before the 1980s has proven difficult to find, but since the mid-1990s, Inner Mongolia has indeed been wealthier, judged by GDP per capita.<sup>46</sup>

The past forty years have been a period of reconnection and discovery for Mongols. While the Inner Mongols imagine renewed bonds of kinship and ethnic relations, they have found instead an unfamiliar neighbor, one with a deep abyss of Otherness. Instead of sharing the Chinese Reform-era goal of economic development, Inner Mongols find that the Mongolians value their democracy, autonomy, and traditional ways of life more highly.

Uradyn Bulag writes that the current Chinese and Mongolian states share an almost “religious criterion of determining Mongolness,” which, combined with modern emphasis on minority nationalities and delineated distinctions between peoples, means that many come to see boundary crossing as “dangerously subversive,” particularly ethnic boundaries.<sup>47</sup> This is reflected both in the Mongolian sentiment towards Inner Mongols, and the Chinese emphasis on a single identity, one that is recorded on identity cards as Han or Mongol, without any nuance. Bulag has railed against the idea of pure Mongols and dichotomous identities in numerous articles and books, hoping to identify hybridity as a vital part of Mongol identity.

There are two main neighboring relationships at work in Inner Mongolia. First is the long-standing relationship between Han Chinese who live in the region and Mongols, whether they are herders or have moved into cities. The second, more recent neighboring relationship, is between Mongols in China and Mongols in Mongolia.

Neighboring is always about the tension between the intimate and known, and the “unfathomable abyss of radical Otherness.” In attempting to assimilate the Inner Mongols into Chinese society as a mere ethnicity, the Chinese are attempting to eliminate this unfathomable Other. Chinese scholars emphasize the importance of Chinese national identity within ethnic identity. For example, Ai Yisi at Minzu University of China writes, “Only when ethnic minority groups (少数民族群) have confirmed their Chinese national identity and recognized their belonging to the country can they truly connect their future and destiny with the prosperity of the country.”<sup>48</sup> Only when ethnic minorities like the Mongols have made Chinese nationality a vital part of their identity, and subordinated their ethnic-national identity to the role of ethnicity, will they be allowed to fully reap the benefits of living in China.

For Mongols in China and Mongolia, the influence of the outside Han and Soviet powers has created a gulf of Otherness. Thus, this relationship which used to be familial has become that of a neighbor, and the abyss between the two has only grown since relationships began again during China’s reform era. The abyss between Han and Mongol has been studied and observed in diverse ways of interacting with the same landscape and different ways of observing walls. The abyss between Inner Mongol and Mongolian Mongol, on the other hand, is more complex. They share many cultural symbols, and yet Mongolians have a deep disdain for Inner Mongols. Franck Billé explores the relationship of Mongols to the Chinese in his book *Sinophobia*, observing that “as liminal Mongols, Inner Mongols are also frequently viewed with even more ambivalence and suspicion than the Chinese themselves.”<sup>49</sup>

### ***Inner Mongols: Nationality or Ethnicity?***

While co-ethnic connections remind Inner Mongols of their history and ethnic identity, these connections also remind Inner Mongols that underneath this sameness lies a deep abyss of Otherness. Decades of separation have altered their political, economic, and national status. The biggest question for Inner Mongols is whether they are still a part of the Mongol nation, are their own nation, or whether they have been reduced to a Chinese ethnicity. As Uradyn Bulag sees it, maintaining nationality status requires supporting “the economic, social, and cultural preconditions, as well as the political powers that can meaningfully define the purpose and quality” of Inner Mongol speech and identity as speech act.<sup>50</sup> The four main markers of nationality, based on my readings of Stalin, Bulag, and others, are: a common territory, economy, politics, and language.

In terms of territory, analysis above shows how the influx of Han farmers quickly made

Mongols the minority in Inner Mongolia. There are some banners and *aimags* (counties) where Mongols are the majority, but these are few and far between. Farmers and sedentary pastoralists have partitioned the once-freely roamed steppe grasslands, leading to desertification.

number has dropped to about 60%.<sup>51</sup> In 1990, almost 60% of Inner Mongol parents chose Mongolian-medium schools for the children. Today, it is a little over 30%. This is mainly explained by the difficulty for Mongolian-language school graduates to find jobs and enter university.<sup>52</sup>

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The traditional economy of the Mongols, the pastoral nomadic society that interacts with, but is apart from, settled states, has also been effectively crushed by Han Chinese immigration. Mongols, as seen above, have shifted from nomadic pastoralism to agriculturalism, towards urban-based jobs. By 1990, more than half of the Inner Mongolian population lived in cities.

Politically, the Inner Mongols have splintered. There are still positions in government reserved for ethnic Mongols, but these are overseen by Han CCP secretaries. Inner Mongolian politics is split between eastern and western Mongols, who primarily compete with each other for positions instead of with Han citizens. In essence, the majority of Inner Mongols have been co-opted by the Chinese state through past and promised economic gains.

Language, the last remaining bastion of Inner Mongol nationality, is especially important to the Mongols. They have valued education since the Mongol empire, with Inner Mongol literacy higher than Han Chinese literacy throughout the history of the IMAR. But the Mongolian language has decreased in importance and usage has dwindled. In 1988, almost 80% of the Mongols spoke Mongolian fluently, but that

Where does this leave the Mongol nationality? As I see it, the nationality is hanging on by a thread. Perhaps the best chance, particularly for cultural and political cohesion and linguistic vitality, is continued interaction with Mongolia. When the Mongol language is an asset instead of a handicap, when Mongol culture can be a touchstone for business ties and friendships, then there is value in Mongol nationality and reason for Inner Mongols to maintain this identity.

Uradyn Bulag theorizes a dual-assimilationist policy of the Chinese state: first, the regime consolidates myriad peoples into defined ethnic groups; second, the regime works to assimilate these groups into the Chinese people.<sup>53</sup> In this way, Beijing seeks to eliminate the “unfathomable abyss of radical Otherness” of Mongols and exchange the multinational Chinese state for a multiethnic nation. This is clear in the number of policies meant to familiarize the Inner Mongols with Chinese language, people, and culture. In all four areas—land, language, political representation, and unique economic activity—the Inner Mongols have lost substantive ground, resulting in the decreased legibility and legitimacy of Mongol identity.

Surprisingly, however, the Mongols have not agitated for independence for decades. Enze Han explains the Inner Mongols' lack of aspiration for true autonomy as a function of having an independent kin state in Mongolia and being economically developed in comparison. Han shows that Mongol ethnic identity and Chinese citizenship are complementary identities for Inner Mongols. At the same time, free market competition has gradually integrated the Mongols into Chinese society, as those who speak Mandarin and work on farms or in cities enjoy a higher standard of living than solely Mongol-speakers and pastoralists.<sup>54</sup>

### ***Conclusion: Second-Generation Ethnic Policies***

Investigating identity and neighboring allows for a critical evaluation of the effects the second generation of ethnic policies will likely have on Inner Mongols' identity and interaction with neighbors. Historically, Mongol social structure was fluid—capable of both uniting and fracturing discrete tribal identities and absorbing former Han citizens. Now, it has morphed into multiple distinct modern Mongol identities. In Mongolia, Mongol identity is rigid, politically bounded, and hierarchical based on one's

minority-based benefits, and overall increases in economic opportunities.

Despite the previous policy of reducing ethnic inequalities and gaining minority support through regional autonomy and support for minority customs and languages, minorities have not integrated into the *zhonghua minzu*, the Chinese citizenry, despite concerted efforts since before the Chinese Communist Party was founded in 1921. The second-generation ethnic policy, then, consists of a reevaluation of minority benefits, autonomy, and protections, rolling back many of these affirmative action policies that, while reducing inequality and underscoring the benefits of being a Chinese citizen, also serve to emphasize the differences between minorities and Han.<sup>55</sup>

Xi Jinping has championed the goal of assimilating ethnic minorities into the *zhonghua minzu* to reduce continuing disparities between Han and minority citizens, to remove seemingly unfair preferential treatment, and to reduce simmering ethnic tensions.<sup>56</sup> The policy, framed as an American-style melting pot of integration, emphasizes eliminating nationality characteristics and turning minorities into mere ethnic groups who are loyal Chinese subjects.

*Ironically, the major impediment to the integration of Inner Mongols into Chinese society and reduction to an ethnic group is Xi's second-generation ethnic policy.*

tribe. In IMAR, Mongol identity has become more prevalent but less salient, based more on state-given benefits than connections with one's community. This transformation of Inner Mongol identity has been overwhelmingly driven by economic incentives received through Chinese nationality—both

This, then, explains why the Inner Mongols took such significant actions in the summer of 2021, protesting and removing children from schools. The PRC's policy of "bilingual education" is a switch from Mongolian as a language of instruction to Mongolian as a subject, leading to a significant reduction in



the number of and rigor of classes taught in Mongolian, in specifically Mongol-language schools. This is the beginning of the second-generation ethnic policy in IMAR.

Ironically, the major impediment to the integration of Inner Mongols into Chinese society and reduction to an ethnic group is Xi's second-generation ethnic policy. After the announcement of the new Mongolian school language policy, hundreds of Inner Mongols protested—numbers not seen for over a decade.

This change in the bilingual education policy also led to protests in Mongolia, a country not known for its mass movements. On September 1, Mongolian President Battulga appeared on national television in traditional clothing, with a group of children reciting a poem about the Mongolian standing script, written by the Inner Mongolian poet Secencogtu. Elbegdorj, a former Mongolian president, went as far as to characterize the situation as “cultural genocide” of the Mongolian language.<sup>57</sup> Considering the deep dependence the Mongolian state has on China, these statements are a harsh rebuke from the Mongolian government and elites. During a visit by the Chinese Foreign Minister in the summer, amid coronavirus restrictions, about one hundred people protested in Ulaanbaatar, a significant turnout for the city.<sup>58</sup>

In its attempt to remove the last major vestige of Inner Mongol nationality, the language, the Chinese state has in fact revealed a deep pride in Mongol identity, and the cohesive desire of Mongols in both IMAR and Mongolia to preserve their ethnicity. Further heavy-handed policies meant to reduce the importance of Mongol identity in IMAR may instead fuel a cohesive political desire across the two Mongolias, giving strength to the nationality.

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# *Balancing Global Commitments Against Industrial Policy Goals in China's Domestic Automotive Industry: A Case Study*

***Joseph Vaughan***

China recently celebrated its 20th anniversary as a World Trade Organization (WTO) member. China's record of involvement in the WTO since its December 2001 accession has long been a contentious one. WTO membership proved a boon for China's growth: From 2001 to 2019, its GDP expanded by an average of 9.1 percent per year, a much higher rate of growth for a significantly longer period than any comparably sized economy has experienced in recent memory.<sup>1</sup> Less than a decade after it joined the WTO, China surpassed Japan as the world's second largest economy, and soon thereafter it overtook the United States as the largest economy measured by purchasing power parity.<sup>2, 3</sup> While official Chinese state media cast the country's participation in the global trading system as evidence of its goodwill toward the world, China's critics—including top government officials in the U.S. and EU—express varying shades of discontent over China's alleged failures to keep its accession promises and adhere to mutually agreed-upon WTO rules.<sup>4, 5, 6</sup> This paper evaluates the validity of these criticisms through the policy lens provided by China's automotive industry.

While his immediate predecessors tended to prosecute their trade-related grievances against China within the auspices of the WTO, President Trump and his cabinet officials expressed a jaundiced view of such multilateralist efforts.<sup>7, 8</sup> In a January 2018 report to Congress, the Office of the U.S. Trade Representative (USTR) assessed that the U.S. had blundered in allowing China to join the WTO under insufficiently stringent safeguards; that China's economy remained largely "state-led"; and that WTO rules lacked the capacity to meaningfully rectify or sanction the Chinese government's most egregious offenses.<sup>9</sup> Shortly thereafter, USTR published the results of its Section 301 investigation in a painstaking report that would furnish much of the legal and procedural basis for the Trump administration's punitive rounds of tariffs on Chinese exports to the United States.

The sharp protectionist turn under President Trump poses the question of whether the U.S. and like-minded countries might in some sense be justified in their buyer's remorse. Are claims of China's malfeasance and noncompliance warranted, or mere grouching in the wake of China's stunning economic success? How have China's leaders sought to reconcile their development agenda with the myriad constraints mandated by the Protocol of Accession? This paper seeks to answer such questions by first juxtaposing the most salient U.S. criticisms of China's WTO record against the opinions of analysts who see China's conduct as within the mainstream of international trade norms. The paper then interrogates both sets of claims through the interaction between state development planning and firm behavior in China's domestic automotive industry. Finally, the paper explores the extent to which the Chinese auto industry's post-WTO development path can provide answers to broader questions concerning the efficacy of industrial policy and whether China acts as a "responsible stakeholder" in the global trading system.

## ***Background: Difficult Tradeoffs of China's WTO Accession***

Given the current low state of U.S.-China relations, the atmosphere surrounding China's accession is often remembered as one marked by Western naivete and irrational exuberance.<sup>10</sup> President Clinton famously predicted that China's inclusion in the world's premier club of free-trading nations would yield "greater openness and freedom for the people of China."<sup>11</sup> In 2000, a group of 149 eminent American economists—among them Milton Friedman, Paul Samuelson, and 11 others of their fellow Nobelists—signed an open letter arguing that bringing China into the WTO would benefit American companies, "promote economic development and freedoms," and "advance the rule of law in China."<sup>12</sup> In a letter to the White House, prominent lawyer and pro-democracy activist Martin Lee (who would later be jailed by the People's Republic of China (PRC) government amid the Hong Kong protests of 2019-2020) gave a full-throated endorsement of the PRC's inclusion in the WTO, stating that it would "bolster those in China who understand that the country must embrace the rule of law."<sup>13</sup> Francis Fukuyama predicted that the WTO might one day "become not just the advocate of economic freedom, but of human freedom more generally."<sup>14</sup> Such statements evince a shared faith in the optimistic notion that economic and political reform might continuously reinforce each other as China modernized and grew rich—a belief which has since faded in Washington circles.<sup>15</sup>

Having held an observer seat since 1982, China applied for full membership in the General Agreement on Tariffs and Trade (GATT, the WTO's predecessor institution) in 1986, nearly a decade into China's reform and opening period. Negotiations over China's membership in the global trading system ebbed and flowed for another 15 years, during which time the GATT morphed into the more comprehensive and rigorous WTO. China's government and those of its

trading partners saw both immense economic opportunities and significant risks in the prospect of China's admission to the new trading body. For China, the opportunity lay in the size of the global market, large swaths of which would remain inaccessible to Chinese manufacturers so long as it remained outside the U.S.-led system. For business leaders and policymakers in the U.S. and other developed economies, the enormous scale of China's consumer market, against a backdrop of rapidly rising wealth, offered similarly limitless possibilities. The WTO established a framework in which developed economies could confidently reduce their barriers to imports from the emerging world in exchange for dramatically expanded market access granted to their multinational corporations (MNCs)—through lower tariffs and the removal of protectionist policies favoring local industry—in developing markets such as China's.<sup>16</sup>

In a 1991 speech before Sinopec's head office in Beijing, future Premier Zhu Rongji argued in favor of greater integration with the global economy. He stressed the need to integrate the "superior features of a planned economy with those of market regulation" and lamented that the economy had swung too far in the direction of state planning and empire-building among state-owned enterprises (SOEs), resulting in rampant overcapacity and shoddy production. Zhu warned that "once we join the GATT, cheaper foreign goods will come flooding in" and that domestic firms would need to compete against higher quality products or else go extinct.<sup>17</sup> Throughout the 15-year period of negotiations, Zhu and like-minded policymakers aggressively pushed through reforms that reshaped China's economy, making it significantly friendlier to and less cumbersome for private enterprise, both foreign and domestic.<sup>18</sup> Such reforms served a dual purpose: to pave the way for China's acceptance into the multilateral trading system, while also ensuring China's domestic industries would be strong enough to withstand the deluge

of foreign competition that accession to the WTO portended.

By the time Zhu Rongji replaced his conservative rival Li Peng as Premier in 1998, he and President Jiang Zemin had come to view the WTO as a necessary vehicle for restructuring China's languishing state-owned sector, which threatened to derail the nation's growth trajectory.<sup>19</sup> For all his ambition and ability, Premier Zhu occupied a tenuous negotiating position both at home and abroad. In order to join the WTO, China needed to first meet the high standards agreed to among the existing membership, before negotiating "WTO-plus" side agreements with any member country that wanted one.<sup>20</sup> In effect, this meant that the final terms of any agreement that allowed China into the WTO club would place unique demands on China, even as it relaxed the rules for existing members vis-à-vis China. Predictably, Chinese SOEs and provincial governments feared the consequences of the radical liberalizing measures on offer, to both their political clout and their chances of survival. Further complicating matters, the Asian Financial Crisis of 1997-1998 caused foreign direct investment (FDI) and export demand to dry up, threatening to scupper the leadership's growth targets and raising the urgency to broker a deal. The U.S. negotiators naturally hoped to use their substantial leverage to extract as many concessions as possible. Though his American counterparts praised Zhu's hard-charging reformist attitude, they failed to appreciate the degree to which the grueling negotiations exposed him to domestic criticism. White House officials thoughtlessly undermined Zhu's political position further by unilaterally publicizing Chinese concessions before an agreement had been finalized.<sup>21, 22</sup>

While the momentum at the leadership level in China ultimately proved sufficient to close a deal with the U.S., the perception among many powerful Chinese elites that China had prostrated itself in joining the WTO contributed to the slowing pace of

reform after accession. Diminished interest in liberalizing reforms would in turn feed sentiments among China's trading partners that the country had not adequately followed through on its onerous commitments.<sup>23</sup> The details of China's accession agreement—the longest in the WTO's history—are too complex to recapitulate here, but it bears noting that much of the worst medicine of corporate restructuring and SOE downsizing (what one might call China's own "reform shock") transpired in the decade prior to the moment of accession itself. Naughton estimates that industrial SOEs shed over 27 million jobs from 1992 to 2007, a steep 61 percent drop in employment among that group, after which absolute employment numbers finally began to stabilize.<sup>24</sup> By comparison, Autor et al. found that import competition from China directly resulted in 2 million lost jobs in the U.S. manufacturing sector from 1999 to 2011—although some contend that the real number is likely much lower.<sup>25</sup> The relative scale, timing, and distribution of the costs to trade liberalization incurred by China and the U.S. provide essential context for understanding the current impasse between China and its trading partners over the need for continued reform.

### ***Literature Review: Surveying Critics & Defenders of China***

In a scrupulous legal critique of China's record of WTO compliance, Wu argues that legitimate trade-related concerns over its *sui generis* economy fall into two categories: those disputes that the extant WTO system can satisfactorily adjudicate, and those that call for fundamental structural reform of the WTO, a process which would require China's participation. In the first category, he lists local content requirements, state interference in the marketing and distribution of products, and collusion between the state and Chinese firms in setting prices and competing for global market share. For each item in this first category, Wu offers examples of

successful cases before the WTO's Dispute Settlement Body that produced rulings against the offending practices.<sup>26</sup> Webster and Oh qualify this analysis somewhat with their notions of "paper compliance" and "convenient compliance." The former describes a disparity between regulatory and legal reforms on paper and their realized effect on behavior among firms and the bureaucracy, whereas the latter denotes a pattern in which the Chinese state knowingly adopts non-compliant industrial policies that it removes only after years of legal wrangling, thereby propping up local industry where convenient even as it seeks to preserve its WTO credentials.<sup>27</sup> Wu appears less concerned than many other critics of China over charges of "forced" technology transfer, in that he feels the WTO offers ample mechanisms for dealing with such policies, of which China is scarcely the only perpetrator.<sup>28</sup> In contrast, Ezell asserts that the WTO has been ineffectual in keeping China's forced technology transfer practices from growing steadily more brazen and ubiquitous.<sup>29</sup>

One area in which Wu judges existing WTO constraints to be inadequate is that of illegal (under WTO law) subsidies to SOEs since the uniquely opaque nature of government-business relations in "China, Inc." often makes it difficult to gauge the level of state interest in firms receiving support.<sup>30</sup> To date, the Dispute Settlement Body has adjudicated two cases related to subsidies given to Chinese SOEs—both complaints from Chinese officials against punitive U.S. antidumping and countervailing duties, in which they alleged that the U.S. had misidentified subsidy recipients as state-owned firms. The WTO's Appellate Body ruled that mere public ownership was not sufficient grounds on which to disqualify a given firm from receiving financial contributions from the state. However, the Appellate Body also sided with U.S. litigants in their belief that it is fair, in principle, to designate private entities receiving subsidies as "public bodies" if they have developed a close relationship with the state.<sup>31</sup> This

ruling suggests that the WTO may be prepared to authorize countervailing duties in response to actions performed by ostensibly private corporations. Partly for this reason, Bown and Hillman have argued that the WTO dispute settlement mechanism remains the most effective venue available for challenging China's web of preferential subsidies.<sup>32</sup>

### ***Defenses of China's WTO Record***

The critics notwithstanding, many observers have defended China's record in the WTO as either better than, or similar in character to, that of its fellow members. Huang points out that China was the only member to join under significantly stricter measures than those agreed upon at the WTO's founding and that China should be credited for agreeing not to avail itself of special privileges normally afforded to developing economies.<sup>33</sup> Wei notes that since 2001, China has been the subject of a lower share of total WTO disputes than the U.S., and that of the 47 complaints lodged against it, only two have necessitated a follow-up case, compared with 15 complaints against the U.S. over the same period.<sup>34</sup> For his part, Lincicome argues that China's record of compliance is "arguably better than that of the United States, which has famously shirked WTO rulings on subsidies, anti-dumping rules, and internet gambling."<sup>35</sup> In contrast, Rodrik accepts that the Chinese government does not strictly follow WTO regulations—that instead, it follows looser "Bretton Woods rules"—but claims that it simply looks after its own development interests in much the same manner as all now-developed countries once did during their own periods of highest growth.<sup>36</sup>

### ***Case Study: China's Auto Industry***

The Chinese automotive industry deserves close examination in the context of the debate over China's conduct in the WTO for several reasons. First, since the early



days of Deng Xiaoping's "reform and opening-up" policy push, the Party leadership has repeatedly upheld the auto industry's strategic importance and reaffirmed its conviction in the need for a domestic automobile manufacturing base strong enough to compete in the global export market.<sup>37, 38</sup> In contrast to certain other high-profile industries, the auto sector in China has long been state-dominated. As a result, it has served as a laboratory for state industrial policy for decades, as planners have engaged in iterative experiments involving a dynamic mix of restrictions and incentives designed to foster local champions. For four decades after Mao's death, the state maintained firm policies designed

each fearful of what more intense global competition might precipitate. The 2016 political realignment in the American electorate that brought about the ongoing trade and technology clash with China closely corresponds to what David Autor and his co-authors have called the "China shock," i.e., the influx of cheaper Chinese imports that accelerated the hollowing-out of America's industrial heartland, which the Democratic Party had long counted in its political s leading EV firm, Tesla, appear joined together in a high-stakes bet on the sustainable nature of ever-deepening U.S.-China economic ties.coalition.<sup>39</sup> The geopolitics of the auto industry will continue to merit attention given the sec-

*For China's automakers, the changes required by the Protocol of Accession constituted a regulatory about-face after decades of state patronage, underscoring the seeming contradictions between the Party leadership's lofty industrial policy aspirations and its desire for China to be seen as a good-faith member of the global trading regime.*

to limit private sector entrants and prohibit foreign majority ownership. For China's automakers, the changes required by the Protocol of Accession constituted a regulatory about-face after decades of state patronage, underscoring the seeming contradictions between the Party leadership's lofty industrial policy aspirations and its desire for China to be seen as a good-faith member of the global trading regime. Examining how state actors at different levels of authority in China have sought to resolve this tension can help make tangible what are too often hazy charges of "state capitalism" or "forced technology transfer."

Only in recent years has the Party leadership, under intense pressure from the United States, began to relax decades-old restrictions on FDI intended to protect state-owned automakers. In the late 1990s, the automotive lobbies of both China and the U.S. fiercely resisted WTO accession,

tor's central role in the development of core technologies of the future—including electric vehicles (EVs), autonomous driving, and battery storage—especially now that the Chinese government and the world'

### ***China's Automotive Industry Before Accession***

The involvement of MNCs in China's automotive industry predates accession by nearly two decades, dating back to the American Motors Corporation's partnership with Beijing Automotive Industry Corporation (BAIC) in 1983.<sup>40</sup> This agreement formed Beijing Jeep Corporation, the first major manufacturing joint venture (JV) since the normalization of U.S.-China relations in 1979. A year later, the central government officially removed the ban on individual private ownership of motor vehicles, and Volkswagen entered the market through a JV of its own with Shanghai Automotive

Industry Corporation (SAIC). As the names of these local partners suggest, the domestic automobile industry in China was at that time entirely state-owned and generally plagued by problems of low-quality manufacturing processes, outdated technology, and overcapacity resulting from state planning schemes that had duplicated production across provinces. Notwithstanding the industry's enormous strides in the decades since, some of these basic features have persisted into the present.<sup>41,42</sup>

Under China's paramount leader Deng Xiaoping, whose domestic reform program opened China's doors to foreign corporations, economic planners designated automobile manufacturing a "pillar industry" of strategic importance for China in 1986.<sup>43</sup> This move signaled the state's interest in ensuring its domestic industry's survival in the face of fierce competition from MNCs, even as it hoped these same foreign firms would bring the technology and expertise needed for local carmakers to emerge from decades of stasis. The example of thriving Japanese and South Korean automakers who dominated their home markets before advancing to compete abroad showed what was possible if China could only find a way to catch up. However, the extent of China's underdevelopment in the 1980s was such that the

foreign economic relations throughout the decades since China's markets began reopening to the outside world.<sup>44</sup>

During this period of economic reform, state planners took inspiration from Japan and South Korea in envisioning a domestic automotive manufacturing ecosystem in which foreign technology and expertise would flow into China just as demand for passenger vehicles began to take off. As the country's indigenous manufacturing capabilities became increasingly sophisticated, the need for imported vehicles and parts—paid for with foreign currency—would naturally decline, easing the burden on China's foreign exchange reserves.<sup>45</sup> As one policy document from the mid-1980s put it, China's automakers should "make use of exports to get foreign exchange ... make use of imports to get technology." This vision of an export-driven growth engine acting as a bulwark to the Chinese economy and currency did not comport with stubborn realities on the ground. Planners intended that the JV structure would forge platforms for free-flowing exchange of technology and strategic know-how, through which the MNCs would teach their local counterparts the complete process of designing, assembling, and marketing passenger vehicles for the global consumer.<sup>46</sup>

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Party's top leaders felt they had little choice but to begin by importing the expertise of leading global manufacturers. They did so with the intention of "exchanging the domestic market for technology"—a theme that has pervaded and complicated China's

By the early 1990s, Chinese officials had grown frustrated by the sluggish pace of technology transfer. Planners intended that the JV structure would forge platforms for free-flowing exchange of technology and strategic know-how, through which the



MNCs would teach their local counterparts the complete process of designing, assembling, and marketing passenger vehicles for the global consumer. Volkswagen launched its second Chinese JV with First Auto Works in 1990 and, within a few years, had taken a commanding 50 percent market share with models that were several generations behind those sold in Europe and the U.S.<sup>47</sup> In addition to the still yawning gaps in indigenous manufacturing capabilities and consumer purchasing power that persisted between China and its East Asian neighbors, the legal regime governing the structure of the joint ventures left the MNCs free to decide how to design, build, and sell the end product themselves, with little useful technology or expertise passing on to their SOE partners.<sup>48</sup> Barring a major shift in policy, this supposed pillar industry appeared stuck in its role as a junior partner left to focus on rudimentary portions of the value chain while foreign MNCs reaped most of the profits.

### ***Course Correction: Shoring Up Industrial Policy***

The National Development and Reform Commission (NDRC) changed course with its 1994 Auto Industry Policy, China's first industrial policy initiative tailored to a specific sector.<sup>49</sup> The new policy limited MNCs to a maximum of two JVs apiece; enshrined the 50 percent foreign ownership cap in law; imposed import tariffs of 80 to 100 percent on both auto parts and completed vehicles; and instituted minimum local content requirements of 40 percent for all producers. Firms that sourced more than the minimum-required level of their components from inside China were made eligible for tax breaks and other benefits.<sup>50</sup> The policy also sought to block new entrants to the sector and kickstarted a series of acquisitions intended to produce a "big three" set of national champions modeled after the dominant American trio of Ford, General Motors, and Chrysler, as well as a secondary "little three" group 三大三小.<sup>51</sup> These

industry-wide efforts to rationalize smaller players, reduce overcapacity, and implement leaner production methods among the SOEs left standing would carry on for years, achieving mixed results.<sup>52, 53</sup>

That same year, regulators implemented an overhaul of China's system of foreign exchange, which unified the dual exchange rate system and devalued the renminbi by 33 percent, fixing it at a rate of 8.7 RMB per U.S. dollar—where it would remain for more than a decade until external upward pressures on the currency became too great for policymakers to ignore.<sup>54, 55</sup> These actions to depreciate and stabilize the currency against the dollar help to explain why, despite stricter import barriers and local content rules, foreign automakers participated with renewed gusto in the contest to partner with SAIC in its second JV. The winner, General Motors, even agreed to the government's request to form the industry's first joint technology development center—the \$50 million Pan-Asia Technical Automotive Center (PATAC)—alongside its state-owned partner. Later, to finance its ballooning debts in the aftermath of the 2008 recession, General Motors would sell one percent of its stake in PATAC to SAIC, giving it control over the initiative.<sup>56</sup>

As U.S.-China WTO negotiations came to a head in the late 1990s, the central government in Beijing passed a series of lower-profile regulatory measures designed to facilitate a secondary market in passenger vehicles and strengthen safety and pollution controls to spur convergence with global standards. State planners were once again simultaneously solidifying China's credentials for WTO inclusion while preparing local companies to upgrade their processes in anticipation of the tidal wave of competition that accession would bring. From 1994 to 2001, the industry increased annual vehicle production by 64 percent while reducing its total manufacturing headcount by one-fourth.<sup>57</sup> But domestic automakers still appeared vulnerable. The 1994 industrial policy and subsequent

reform measures had done little to disrupt the basic underlying arrangement between foreign and domestic firms. Local champions had yet to develop the technology and expertise necessary to compete on their own in the Chinese market, let alone overseas.<sup>58, 59</sup>

### ***Industrial Policy After Accession***

The agreements negotiated between China and the WTO membership leading up to China's accession would, on paper at least, undo many of the protectionist measures planners had devised to strengthen pillar industries. Perhaps nowhere were China's concessions more sweeping than in its automotive industry, where it pledged to remove local content restrictions, bring import tariffs on finished vehicles down from 80 to 100 percent to 25 percent by 2006, lower tariffs on auto parts from 35 percent to 10 percent by 2006, phase out import quotas and licenses by 2005, and abolish technology transfer requirements imposed on MNCs.<sup>60</sup> The relatively short

This perceived vulnerability of China's automakers, compounded by the lingering fear among many industry insiders that the leadership had given up too much from a weak bargaining position, partially accounts for the persistence of subsequent efforts to blunt the impact of the reforms. After accession, the performance of the Chinese economy showed such anxieties to have significantly underestimated the ability of China's domestic industry to adapt to the removal of trade protections. The WTO ended the state's old regime of total control over export markets through foreign trade companies, because of which foreign-invested and private firms in China took significant market share from the less efficient SOEs. By 2005, China's exports from its state-owned sector plummeted from 67 to 22 percent.<sup>63</sup> This unleashing of market forces in the domestic economy opened unprecedented possibilities for MNCs and Chinese entrepreneurs alike to get rich, spurring a productivity boom that reinvigorated growth after the doldrums of the late 1990s.

*The logic of the WTO's "grand bargain" between developing and emerging economies suggested that China's booming export industries would benefit at the expense of those that the state had deliberately shielded from import competition. In this arrangement, domestic autos seemed a surefire loser.*

phase-out period of long-entrenched import barriers conjured up fears of mass unemployment.<sup>61</sup> The logic of the WTO's "grand bargain" between developing and emerging economies suggested that China's booming export industries would benefit at the expense of those that the state had deliberately shielded from import competition. In this arrangement, domestic autos seemed a surefire loser. It is therefore unsurprising that the automakers lobbied the Party leadership so vociferously against signing the deal.<sup>62</sup>

For the automakers, WTO accession was less disruptive than it had been for many other sectors. The leadership successfully negotiated to keep the JV limits formalized under the 1994 Auto Policy in place, and the newfound stability in the investment outlook provided ample incentive for foreign automakers to grow their presence in China. The flood of FDI created something of a flywheel effect, as new manufacturing facilities, technology, and investment capital proliferated up and down the supply chain. Despite the planners' best efforts, many

of the smaller private carmakers formed against the central government's wishes during the pre-accession period—including Geely, BYD, and Great Wall—seized upon opportunities provided by liberalization to become formidable players in their own right.<sup>64</sup> Owing to these factors, lower tariffs did not attract a wave of finished vehicle imports into China, as MNCs came to prefer building local factories that shipped to end-users from within the domestic ecosystem.<sup>65</sup> The government therefore found it fairly painless to deliver on its numerical commitments to reduce import barriers on vehicles and parts by the mid-2000s.

Nonetheless, the Party's industrial policy ambitions for its domestic auto champions continued into the post-accession era. In 2004, the NDRC updated its 1994 policy, reiterating the state's basic overarching aims to develop indigenous capabilities and consolidate production among a handful of large firms.<sup>66</sup> To help achieve these goals and soften the impact of the WTO pledges, the policy determined that any car produced domestically with less than 40 percent of local content would be considered for tax purposes a fully imported vehicle and receive the 25 percent import tariff as a result.<sup>67</sup> In the third WTO case against China, the U.S. argued that the new policy effectively allowed the higher 25 percent import tax reserved for finished vehicles (the maximum tariff on parts had declined to 10 percent) to be levied against auto parts as well. The WTO ruled in favor of the U.S. and its fellow plaintiffs, but the Chinese government's decision to appeal bought ample time for the policy to permanently alter firm behavior in the industry.<sup>68</sup> While the government officially retired the policy after its appeal was denied, Wu shows that new measures sprang up in its place, including subsidies for foreign manufacturers to transplant their auto parts production facilities to China and the exploitation of loopholes in the WTO's value-added tax rules to tax imported parts at a higher rate.<sup>69</sup> Although Wu attributes China's increasingly dominant global

market position in auto parts primarily to these tactics, Brandt and Thun argue that MNCs' decisions to share expertise have primarily been driven by market incentives to train and invest in capabilities among their local suppliers, making Chinese parts manufacturers more globally competitive in the process.<sup>70</sup>

In 2018, President Xi Jinping announced plans to reduce the 25 percent import tariff on automobiles and phase out JV limits in the automotive sector by 2022.<sup>71</sup> Xi also announced the relaxation of the 50 percent ownership rule for EV manufacturers that same year, paving the way for Tesla to become the first foreign automaker in possession of a wholly owned Chinese subsidiary, Giga Shanghai.<sup>72</sup> Their successes notwithstanding, China's planners have yet to realize the ultimate dream of developing Chinese brands powerful enough to rival those of Ford and Toyota in the global market. By some accounts, this failure is a direct result of the venerated joint venture and FDI restrictions, which engendered a "JV mindset" among China's national champions, prompting them to specialize in assembly while their foreign partners focused on branding and design.<sup>73</sup> China's planners, perhaps due to unfamiliarity with the workings of global capitalism, never mandated that the JVs sell their cars under Chinese brand names, an omission which allowed the firms to produce vehicles in China and sell them at home and abroad under Western brand names. Ironically, Geely bought Volvo from Ford for \$1.5bn in 2010 but experienced difficulties in convincing Chinese consumers to switch to the brand from more familiar brands like Buick and BMW.<sup>74</sup>

The lightning speed with which EVs have taken share from conventional vehicles in China has caught the foreign JVs flat-footed and may provide local players a fresh opportunity to unseat the established names. Restrictive license plate quotas for non-electric vehicles in many of China's largest cities (where EV sales have faced

no such artificial cap since 2019), in addition to rapid battery cost declines and targeted subsidies for EVs, have produced a ferocious battle for market share in the EV space. China's nimbler private automakers—including Nio, Xpeng, and Li Auto—appear poised to leapfrog the entrenched JVs in this competition for a nascent market with boundless growth prospects.<sup>75</sup> The phasing out of foreign ownership limits for traditional automotive manufacturers is thus less significant than it might seem, as mere majority ownership will likely not be sufficient for the entrenched MNCs to adapt and scale their EV business lines in time. Some industry analysts posit that amid the PRC government's push toward an all-electric auto market, the prior brand advantage long enjoyed by firms such as Volkswagen may turn into a liability, as consumers increasingly associate them with an obsolete product offering.<sup>76</sup>

new wave of innovation and supply-chain upgrading among China's private players. Concerns among market participants and state regulators that Tesla may have grown too powerful too quickly could also force a paring back of President Xi's liberalizing policies.<sup>78</sup> Despite the outwardly symbiotic relationship between Tesla's innovation capacity and the Chinese government's development goals, state planners will likely not permit Tesla's growth in China to interfere with their overriding objective to foster a local EV manufacturing base strong enough to compete globally.

### **Conclusion**

When China joined the WTO, it did so under stricter and more comprehensive terms than any previous member had done. The unusually large shadow of the state in China's economy may have warranted such

*The state's decision to allow Tesla to enter the Chinese market without a local partner is noteworthy; for the first time in the history of China's auto industry, there appears to be some risk that an aggressive foreign firm might carve out a dominant share for itself.*

The state's decision to allow Tesla to enter the Chinese market without a local partner is noteworthy; for the first time in the history of China's auto industry, there appears to be some risk that an aggressive foreign firm might carve out a dominant share for itself. China's industrial policy planners have tended to loosen the constraints on foreign entrants in strategic industries only after those industries have matured enough to ensure they will remain firmly controlled by domestic incumbents.<sup>77</sup> History has proven that the unexpected benefits of WTO reform clearly transcended the anticipated costs to the industry, and it is possible that Tesla's entry could catalyze a

stringent conditions of accession, but many of the same measures that once prompted the most bellicose of Premier Zhu's detractors in China to label him a "national traitor" are today considered toothless by critics of China's record in the WTO.<sup>79, 80</sup> Those critics allege that China has become a global manufacturing powerhouse in large part by systematically flouting WTO rules, siphoning off foreign capital and jobs along the way. China's automotive industry has indeed grown enormous over the past two decades. According to General Motors, nearly one-third of all vehicles sales worldwide in 2020 were made to Chinese consumers. Measured by total vehicle sales,

China's domestic automobile market is now 1.7 times that of the U.S.<sup>81</sup> China's automotive industrial policies have achieved remarkable success, in that they protected the state-owned national champions by conjoining them with the foreign MNCs, such that they now reap enormous annual profits from the world's largest market for passenger vehicles. Whether by accident or intention, the strange cocktail of an artificially depressed but stable currency, hidden protectionist measures, and genuine free-market reforms that proliferated in the years after China's WTO accession conspired to form a much healthier competitive landscape. Chinese leaders largely abided by the original terms of accession but continuously tweaked and refined the rules and incentives governing the auto industry, always aiming to strengthen China's domestic capabilities. They scrapped some of these measures when challenged, whether through the WTO or more direct pressure, but often only after they had outlived their usefulness. Although industrial policy failed to replicate the export-oriented success of Japan and Korea in conventional vehicles, Chinese state planners' efforts to dominate the EV supply chain point to a vision of a fully green global auto industry, in which Chinese design and manufacturing prowess lead the way forward.

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# *The Power of Economic Diplomacy: the Role of FTAs in Beijing's Foreign Policy*

***Ben Phillips***

## ***Introduction***

China's accession to the World Trade Organization (WTO) in 2001 marked a critical stage in the transformation of its foreign policy strategy. Membership in the WTO facilitated the liberalization of Chinese markets and allowed for foreign investment, creating unprecedented levels of economic development.<sup>1</sup> More broadly, rapid market expansion equipped China with newfound leverage in the international system, signaling to Beijing that economic strength sits at the crux of global power. Similarly, the domestic development of China's economy spurred the use of economic relationship-building as a political tool to further foreign policy objectives abroad, paving the way for the integration of Free Trade Agreements (FTAs) into Beijing's diplomatic playbook. Prior to 2001, China was largely unfamiliar with FTAs as a political instrument.<sup>2</sup> However, China wasted no time playing catch up, implementing sixteen FTAs over the next two decades, with eight additional FTAs still being negotiated.<sup>3</sup> Ostensibly, China's vigorous pursuit of FTAs was an extension of Beijing's dogmatic policy prescription to jump-start economic growth through foreign market integration. However, a more concentrated and systematic analysis of

China's FTAs reveals the deeper political motivations and strategic considerations at play.

The following paper offers two critical arguments regarding China's approach to Free Trade Agreements and their role in providing strategic advantage to Beijing's foreign policy objectives. First, it argues that although economic incentives are an important component of China's FTA decision-making process, Beijing remains predominantly motivated by the prospect of geopolitical advantage and promoting Chinese foreign policy interests abroad. Secondly, it contends that once these trade agreements are formalized, China seeks to create channels of access that allow Beijing to deepen its political influence and, if necessary, leverage economic dependency to sway domestic policy decisions. These arguments are formulated by examining China's FTA motivations, partner selection process, current regional and cross-regional agreements, and Beijing's distinctive approach to establishing trade relations compared to other hegemonic powers. As China's global leadership responsibilities continue to grow, developing a critical understanding of China's approach to FTAs can provide valuable insights into understanding how it may garner political influence through economic governance. More broadly, this analysis offers a window into Beijing's foreign policy ambitions and its strategy in carrying out its interests around the world.

## ***The Functionality and Economic Incentives of FTAs***

Although economic incentives play a peripheral role in China's FTA strategy, it is still necessary to acknowledge the financial benefits Beijing stands to gain from implementing such agreements.<sup>4</sup> To provide a broader understanding of these incentives, a brief outline of the structure and functionality of FTAs and their subsequent contribution to the Chinese economy must be introduced.

In essence, FTAs are formalized agreements between nations that incentivize economic interdependence through the reduction of trade restrictions. While each nation varies in its utilization of FTAs, China has quickly grown into a global leader of the trade practice. From Beijing's perspective, FTAs are a critical economic tool that cut down regulatory barriers between nations, which generates increased productivity and economies of scale.<sup>5</sup> Additionally, by expanding access to foreign markets and attracting international investment, China can increase its domestic exports, resulting in GDP growth. FTAs also allow China to develop global production systems, creating export channels that bypass transnational regulations. For example, China often exploits its Free Trade Agreement with ASEAN countries by encouraging labor manufacturing firms to produce in Southeast Asia. By doing so, Chinese firms can gain access to the preferential treatment status U.S. and European countries grant specific ASEAN nations, ultimately allowing Chinese companies to access western markets.<sup>6</sup>

Free Trade Agreements can also serve as critical accelerators for China's future economic plans. As Beijing surpasses the five-year mark of its "Made in China 2025" plan, it has a growing demand for raw material imports that can buttress its domestic manufacturing goals.<sup>7</sup> FTAs can help alleviate this demand by providing China access to foreign markets that export the necessary goods for their production targets.<sup>8</sup> The industrial support China receives from FTA partners is a significant factor in their pursuit of trade negotiations. This can be seen in their current FTAs with Chile, Australia, and certain Gulf countries, all of which export vital raw materials to China, such as minerals and oil.<sup>9</sup> Moreover, China has been keen to engage in trade agreements with a broad range of countries to diversify their market access as well as ensure they are not overly reliant on one channel of material imports.<sup>10</sup>

## ***Geopolitical and Diplomatic Motivations***

Beijing's emphasis on Free Trade Agreements originated from the realization among Chinese leaders that national security is more comprehensive than just military defense and diplomacy.<sup>11</sup> Following trends of Western protectionism in the post-Cold War era, Beijing recognized the need to refine its approach to international engagements in order to better safeguard domestic interests. This realization resulted in the incorporation of economic and technological security into Beijing's foreign policy strategy. As China's global influence continued to grow, it saw economic governance as an important tool that could strengthen diplomatic relations and its geopolitical interests abroad. Under this national security framework, FTAs have become an integral part of Beijing's foreign policy playbook.

China's FTA engagements operate as an economic pathway to establishing strong international relationships that allow Beijing to expand its sphere of influence. Evident through several of its FTAs, China actively utilizes economic relationship-building as a soft power tactic to acquire critical influence overseas while combating the growing power of global rivals.<sup>12</sup> As Razeen Sally states in her analysis of China's trade policy since joining the WTO,

*"China's PTAs are driven more by 'high politics' (competition with Japan to establish leadership credentials in east Asia; securing privileged influence in other regions) than by economic strategy. Foreign policy 'soft power', ie. diplomacy and relationship-building, is paramount."*<sup>13</sup>

Sally alludes to an essential point in China's FTA motivations. Beijing sees FTAs as economic means to a political end. In other words, China does not engage with liberalized trade agreements for the sole

purpose of attaining economic rewards. Instead, they employ FTAs as a strategy to leverage transnational relationships to achieve foreign policy ambitions. That is not to say economic benefits for China are not obtained along the way. However, there is a clear distinction to make between Beijing's driving FTA motivations and the fortuitous economic byproducts accomplished in the process. While economic incentives do play a role in China's FTA decision-making, its utility is relatively marginal and lacks influence in Beijing's choice to engage with partner nations.<sup>14</sup>

The strongest indication that FTAs are not economically motivated lies in the fact that China has a trade deficit with almost all of its free-trade partners. With the exception of Hong Kong, China's trading partners make up 27% of their imports but only 17% of their exports (Data as of 2014).<sup>15</sup> In fact, China's trade deficit with just three of its FTA partners (Japan, Taiwan, and South Korea) has increased from \$78 billion in 2003 to over \$200 billion in 2014. Beijing's strikingly high trade deficit with multiple FTA partners contrasts with the country's positive trade balance with the United States and EU. As this evidence suggests, economic considerations are not the driving force behind China's decision to engage in unequal trade practices.

Additionally, Beijing's willingness to forgo economic advantages is reaffirmed by the reality that China does not have agreements with more prominent, influential economies. Out of China's sixteen active FTAs, only six are with nations that are considered to have fully developed economies.<sup>16</sup> Countries such as Mauritius, Cambodia, and Georgia all have FTAs with China but offer minimal economic incentives as trade partners.

Certain experts push back on this notion and theorize that China is compelled to engage with smaller, resource-rich economies in order to create direct channels of access to raw materials that can drive their

energy and manufacturing sectors.<sup>17</sup> From this perspective, China's strict reliance on certain imported goods is so strong that it incentivizes Beijing to concede economic gains in order to maintain essential conduits of imports. However, this hypothesis is antiquated and has been disproven through analysis of China's market diversification.<sup>18</sup> China's Belt and Road Initiative has allowed Beijing to significantly reduce its reliance on imported goods by acquiring overseas companies and investing in resource development, particularly in the energy and natural commodities sectors.<sup>19</sup> This has allowed China to increase its state-owned assets abroad and expand total imports without having to negotiate through formal FTA channels. Moreover, this process has greatly reduced China's reliance on FTAs to acquire imported products, refuting the notion that China must make economic concessions in FTA negotiations in order to acquire rare imports and raw minerals.

Finally, recent assessments contend that Beijing chooses to engage with partner nations that have comparative advantages in sectors that hurt Chinese producers. The most notable example is the services sector, where China's FTA partners such as Switzerland, Taiwan, and Hong Kong benefit more than their Chinese counterparts from reduction in trade regulations and direct access to foreign markets.<sup>20</sup> This comparative advantage causes Chinese firms to lose business opportunities to foreign competitors and results in capital flowing out of the country.<sup>21</sup>

Given the minimal economic benefits of China's current FTAs and the financial vulnerability it incurs by opening to foreign competition, Beijing's selection process must be driven by alternative interests. As my analysis contends, China's motivations in engaging in FTAs deeply intertwine with China's geopolitical and foreign policy objectives. Each FTA partner offers a unique strategic opportunity in which Beijing can exert influence and leverage

political capital to push its foreign policy interests. By creating economic dependence on Chinese markets, FTAs serve as a conduit for Beijing to access political stakeholders and influence geostrategic decision-making processes abroad.

### ***FTA Selection Strategy***

The exact strategy China employs when selecting its FTA partners remains unknown because there is no published criterion for engagement. However, while any assessment of their selection process is speculative, important consistencies can be drawn from their current and past FTA negotiations that lend insight into their decision-making structure.

China's FTA selection strategy can be classified in two categories: regional and cross-regional. In regional FTAs, China utilizes a more protectionist framework, focusing on maintaining regional stability and hegemonic power, often by making significant economic concessions to establish goodwill with neighboring nations. Additionally, China's regional FTAs usually aim to contain a bordering competitor, requiring Beijing to be deliberate and calculated in the specific trade statutes included in its agreements. In cross-regional FTAs, China approaches negotiations with a long-term outlook, focused on establishing trade roots that can help foster economic dependency. In doing so, China can employ coercive tactics that leverage this commercial dependence to sway the policy decisions of its partner nations. Given the precariousness of these relationships, Beijing tends to be more cognizant of its economic concessions in transnational engagements, resulting in lengthy FTA evaluations that can often take years to settle. While distinct in their techniques, both frameworks are supported by the notion that vigorous involvement in regional and cross-regional FTAs improve China's political economy as well as its international strategic interests. Therefore, all FTA partner considerations

are an important component to foster economic dependency that enhances political power and diplomacy.<sup>22</sup>

While both frameworks assist in comprehending China's distinctive FTA selection strategy, they are not exhaustive in their scope and fall short in comprehensively accounting for Beijing's politicized approach to choosing its trade partners. The reality is, as represented in several of its current FTAs, China often evaluates trade relations on a case-by-case basis, assessing the strategic, political, and diplomatic interests at stake.<sup>23</sup> This is evident through the strong correlation between the nations China decides to engage with via its Free Trade Agreements and its diplomatic partners.<sup>24</sup> Beijing actively judges the political reliability of a potential trade partner and their level of commitment to China's policy objectives, and then decides to participate accordingly.

For example, in 2004, when contemplating Singapore's proposal for an FTA, Chinese leaders sidelined the discussions directly following the decision of the Singaporean prime minister to visit Taiwan.<sup>25</sup> Although eventually moving forward with the agreement, it embodied the volatile approach China takes in its FTA process, and Beijing's willingness to jeopardize agreements if they feel their foreign policy goals have been undermined. More broadly, the case of Singapore reflects the subjectivity embedded in China's FTA selection strategy and the role political circumstances have in Beijing's decision to engage.

When analyzing China's FTA selection process, it's important to distinguish Beijing's approach from those of other nations, specifically those in the West. The unique institutional procedures of Beijing are vastly different from other dominant economies, creating obstacles for strategic assessment and decision-making insight. For example, in the United States, there is an expectation of transparency for institutions that formulate trade policy. They are held

accountable by constituents, policymakers, and fellow governing bodies, requiring them to be standardized and consistent in their approach. In China, this is not the case. Decisions regarding international trade regulations are done covertly and internally within the Chinese Communist Party (CCP) and are expected to be implemented without question. The political landscape of China is unlike most governing structures, making visibility into its FTA considerations extremely difficult. However, general frameworks can be deduced and applied to their current trade relationships, providing insightful understandings into their FTA selection process and the subsequent foreign policy ambitions it reveals.

who actively seeks to exploit the limited negotiation authority of smaller countries in order to enhance their bargaining power.<sup>27</sup> The exploitative nature of U.S. FTAs is best seen in the case of Central America, where the U.S.-Central American Free Trade Agreement allows all U.S. products to be manufactured duty free, which cuts costs for U.S. firms producing in the region but provides little economic benefit for local economies.<sup>28</sup> Contrary to the U.S. approach, Beijing is purposeful with concessions, often drawing attention to the exceptional generosity they enact in building trade agreements.

Secondly, the idiosyncratic criteria used in China's FTA process significantly deviates

*... in 2004, when contemplating Singapore's proposal for an FTA, Chinese leaders sidelined the discussions directly following the decision of the Singaporean prime minister to visit Taiwan.*

### ***Is China's Approach Distinctive?***

To comprehensively evaluate China's FTA process, it is imperative to highlight the distinctive characteristics of its trade agreements compared to other major economic powers. There are three strategic differences in China's FTA considerations, all of which illustrate the politicized nature of Beijing's economic diplomacy. The most prominent distinction between China's trade agreements and those of its competitors is the asymmetric concessions Beijing makes with smaller nations, specifically in its regional FTAs.<sup>26</sup> China consistently relinquishes significant economic opportunities to secondary nations, throwing away its leveraging power in the negotiation process. This is directly at odds with the techniques employed by competing hegemonies such as the United States,

from the international status quo. In other hegemonic powers, FTA decisions are based on standardized evaluations and uniform negotiating procedures, most of which are even made available to the public.<sup>29</sup> For example, the EU has worked to employ a consistent FTA framework that focuses on generating competitive policies and "state aid" with a variety of its trade partners, including South Africa, Chile, and Mexico.<sup>30</sup> By contrast, China uses an unpredictable framework to assess potential partnerships throughout all levels of the FTA process, from its partner selection strategy down to its policy liberalization decisions on specific goods and services.<sup>31</sup> This is a critical distinction in China's strategy as it allows for the case-by-case consideration of each potential agreement, permitting the evaluation of specific political implications and foreign policy opportunities presented.



Thirdly, while countries such as the United States tend to participate in FTAs with geographically distant nations, China has a clear preference for regional engagements. A recent study comparing the FTAs of the United States and China found that the physical distances between China and its FTA partners are significantly smaller than those of the U.S., meaning that relative proximity to Beijing is an influential factor in its considerations.<sup>32</sup> As asserted in the study, this discrepancy in distance reaffirms that notion that “China’s FTAs in the Pacific Rim region are politically motivated agreements that aim to reward diplomatic allies and balance the U.S. influence in the area.”<sup>33</sup>

As discussed above, there are key distinctions in China’s FTA process. However, their efforts to utilize FTAs as a political tool to enhance their international influence are not unique. Evidence suggests that Japan, the United States, and other major economic powers engage in trade relationships for similar reasons. That said, the lengths to which China is willing to go to use FTAs as a channel to acquire diplomatic power differs greatly from other hegemonic powers, as does China’s subsequent interference in domestic affairs of partner nations.

### ***Regional Free Trade Agreements***

China’s regional FTAs are particularly distinctive compared to other global hegemons and serve as Beijing’s most powerful means of economic diplomacy. Apparent through its bilateral relations with ASEAN, Macao, Hong Kong, and Taiwan, China utilizes “big country morality,” the notion of offering generous economic concessions to smaller, provincial neighbors for minimal fiscal return in its regional FTA engagements.<sup>34</sup> This principle continues to guide Beijing’s free trade policies and was recently reaffirmed by Xi Jinping in his speech discussing China’s commitment to granting favorable market access

for partnered nations in which he stated, “China will not waver in its determination to open up, and the big door for opening up will only open wider and wider.”<sup>35</sup> However, this economic generosity is not benign. Instead, it is a tool to formalize ties that open channels of influence, granting China political access to foreign policy decisions and regional stakeholders.

### ***Association of Southeast Asian Nations (ASEAN)***

In 2004, China formalized its historic FTA framework with ASEAN, resulting in Beijing’s most powerful relationship in its FTA arsenal. The agreement between China and the Southeast Asian nations was the first of its kind, having profound implications on Beijing’s future agreements. At the time of the agreement, Japan was the leader of economic development in Asia and maintained a historically significant trade relationship with Southeast Asia, often considered one of Japan’s most meaningful foreign policy achievements in recent years.<sup>36</sup> China was keen to counter Japan’s growing influence over ASEAN nations due to the region’s burgeoning economy and geopolitical positioning near the South China Sea. ASEAN countries are a major stakeholder in China’s maritime claims in the Western Pacific, which acts as a critical trade route for Chinese goods.<sup>37</sup> Additionally, Southeast Asia is viewed by Chinese officials as a crucial component of East Asian security that plays a pivotal role in countering America’s containment strategy. From Beijing’s perspective, Japan acted as a proxy for U.S. interests in the region, causing China to pay greater attention to developing favorable relationships with ASEAN nations.<sup>38</sup> Given the strategic implications at stake, Beijing recognized the need to employ economic diplomacy in its efforts in Southeast Asia. However, China was still in its developmental phase and lacked the resources to match the aid Japan had been extending to ASEAN.<sup>39</sup> Therefore, an FTA served as a creative diplomatic

tool in which China could increase market activity between nations and counter Japanese influence without having to match Japan's economic contributions.

China's FTA with ASEAN represented more than just efforts to counterbalance the expansion of Japanese power, it also personified the very characteristics that are central to China's foreign policy strategy. For decades, China has sought to establish goodwill with its neighboring nations to better protect its national security and advance regional hegemony. FTAs assisted in these efforts, allowing China to make significant trade concessions for geopolitical support. For instance, during the negotiation period for ASEAN-China FTA (ACFTA), China offered to open various sectors of its economy to ASEAN nations with no expectation that it be reciprocated, even allowing ASEAN to independently select the timeline of the liberalization process.<sup>40</sup> Despite its capacity to dictate nearly all aspects of the ACFTA agreement given its regional dominance, China forgave much of its economic advantage to create strong diplomatic relations that were founded on Chinese generosity. Even with China's economic sacrifices regarding the terms of trade liberalization and the "de-industrializing of less-favored regions", market integration with ASEAN remained low, lending weight to the idea that this agreement was a calculated policy decision concerning regional hegemony rather than economic opportunity.<sup>41</sup> Daojiang Zha, Professor of International Political Economy at Peking University, reaffirms this evaluation in his analysis of the ASEAN-China FTA, stating,

*"It is in this sense that formal integration of ASEAN and Chinese economies appears to be tactical in nature. For lack of better vocabulary, the term 'tactical' in this context refers to a policy commitment that has more to do with setting in motion a momentum, rather than a cashing in on past achievements..."*<sup>42</sup>

The success of Beijing's FTA with ASEAN reaffirmed the power of economic diplomacy, ultimately triggering 20 years of intense FTA development around Asia. Additionally, the change from Beijing's passive investments in Southeast Asia prior to the early 2000's to their active pursuit of a trade relations framework illustrated China's evolving strategy in carrying out foreign policy objectives in the region.<sup>43</sup>

### ***Macao and Hong Kong***

Following China's accession to the WTO, both Macao and Hong Kong were among the first territories to formalize an FTA with Beijing.<sup>44</sup> Given their political positioning as extensions of mainland China, they serve as informative examples in Beijing's FTA strategy towards its provincial neighbors. The motivation behind China's decision to select Hong Kong and Macao as FTA partners is apparent in the evolution of their trade relations. Since the FTA's founding in 2003, China has been effective in utilizing its trade partnership with both territories to preserve political and diplomatic interests in the region as well as to demonstrate the benefits of engaging in economic cooperation with Beijing.

China's methodological approach to FTAs with Macao and Hong Kong reveals some of its most coercive economic behavior in trade liberalization. In the case of Hong Kong, the initial agreement stipulated that the FTA be expanded over time to deepen economic ties with the mainland.<sup>45</sup> By 2014, there had been ten iterations of the Hong Kong agreement that vastly broadened the scope of goods included under the liberalization policies, drastically increasing the territory's level of dependence on China.<sup>46</sup> To achieve this comprehensive agreement, Beijing made serious concessions at nearly all stages of the FTA process. At one point in the negotiations, China even agreed to reduce import tariffs to zero by 2006, without any expectation that Hong Kong make similar concessions or compromise their



interests to reciprocate economic gains.<sup>47</sup> The incentives for Hong Kong and Macao were too lucrative to pass up, which gradually produced greater reliance on Chinese markets. By 2018, China was responsible for 50% of Hong Kong's exports. Similarly, as of 2017, China made up 35% of Macao's imports.<sup>48</sup> These FTAs created such immense market integration that China was able to steadily expand its access to an incredible number of sectors in both territories, including transportation, education, and information technology. The possibility of trade diversification for Macao and Hong Kong has become seemingly obsolete as their overwhelming dependence on China, both politically and economically, has made it nearly impossible to change trajectory. Additionally, China's calculated FTA negotiations only enhanced Beijing's influence and authority over each territory's domestic decision-making processes.

In recent years, the strength of China's economic coercion strategy has perhaps been most evident in Hong Kong. To quell pro-democracy protests and impose its political might over the people of its special administrative region, China has gone to extraordinary lengths to leverage Hong Kong's economic dependency for political gain. Utilizing established bylaws in the FTA agreement, Beijing has garnered informal influence by curating close relationships with local Hong Kong business tycoons.<sup>49</sup> To do this, Beijing gifted prominent business leaders in Hong Kong membership into elite CCP political organizations as a way of "aligning friendly forces" and ensuring their institutional allegiance to the CCP.<sup>50</sup> This gave local leaders vested interest in the success of the mainland's repressive efforts in their region as well as a financial stake in the subsequent political takeover employed by Beijing.

## ***Taiwan***

The inherently politicized nature of China-Taiwan relations makes the configuration

of their FTA atypical. Signed in 2010, The Economic Cooperation Framework Agreement (ECFA) between China and Taiwan marked the most significant agreement between the two countries since the conclusion of China's civil war in 1949.<sup>51</sup> For decades, Beijing had refused to formalize trade relations with Taiwanese authorities due to its political hostility towards the island. Despite disagreements over national autonomy, trade relations between the two countries had been quite robust since the 1980s, mainly due to China's desire to attract mainland investments from Taiwan.<sup>52</sup> In fact, bilateral economic relations with the island were so strong that trade soared from USD 44 billion to 169 billion within a ten-year span.<sup>53</sup>

Due to the growing levels of interdependence, Taiwan began initiating attempts to formalize a trade agreement. However, when Taiwan's pro-democracy movement took hold in the mid-2000s, Beijing vehemently opposed any FTA efforts amidst concerns that any agreement would suggest recognized sovereignty. For years, China's discontentment with the Taiwanese independence movement prevented the establishment of an FTA. It was not until the KMT, Taiwan's more China-friendly opposition party, took office following a closely contested presidential race that resulted in the Democratic Progress Party (DPP) losing power. With new Taiwanese leadership, China came back to the FTA negotiating table and made serious concessions to formalize economic ties with the island. Most notably, Beijing's decision to budge on the liberalization of goods under the Early Harvest Program was hugely beneficial to the Taiwanese economy, ultimately solidifying the terms of the agreement.<sup>54</sup> These concessions were driven by China's recognition that the KMT was going to face intense opposition from the DPP in the coming Taiwanese elections. As a result, Chinese officials were cautious about the potential of failed trade negotiations swaying results in favor of the DPP. To prevent any prospect of a democratized Taiwan,

Beijing sacrificed critical economic interests to maintain favorable leadership on the island and persevere long-term political stability in the region.

### ***Cross-regional Trade Agreements***

China's cross-regional FTAs (CRTA) underpin the growing global network of trade alliances that are an integral part of Beijing's foreign policy strategy. Particularly significant are its CRTAs with Australia and New Zealand as they both illustrate China's strategic motivations in initiating transnational commerce as a foreign policy tool. Aside from ASEAN, these two nations were among the first to embark in trade negotiations with China, providing valuable insight into the strategic considerations at play as well as the motivations behind Beijing's expansion of its cross-regional partnerships.

### ***Australia***

From Beijing's perspective, Australia's economic strength made it an attractive candidate for trade liberalization. Economic ties between the two nations were on the rise, growing nearly 270% between 1998-2003.<sup>55</sup> Additionally, their economies were deeply complementary to each other, with Australia primarily exporting raw materials such as oil, wood, and coal while China exports mainly consisted of clothing and technology. Australia's resource-rich economy had long enticed Chinese leaders, as they knew that minerals and raw materials would be crucial to fuel their rapidly expanding economy. Similarly, Australia's domestic labor costs were far higher than China's, giving them a strong incentive to access China's cheap foreign labor. Financially, formalizing a Free Trade Agreement made sense for both nations as they each stood to benefit significantly from decreased regulation. In 2015, they decided to solidify their bilateral relations by establishing the China-Australia Free Trade Agreement (ChAFTA).

However, the economic incentives of China and Australia's FTA only provide a partial picture of Beijing's decision to formalize relations. Strategically, China desired recognition as a "market economy" from Australia and deemed it a fundamental aspect of negotiation efforts. In fact, China threatened to stop negotiations if Canberra didn't publicly acknowledge their economic system. Experts argue that China's unwavering request to be recognized as a market economy during ChAFTA negotiations was due to Australia's economic influence in the global economy and their diplomatic ties to the West. Specifically, China saw Australia as having the ear of the United States, which Beijing believed could be an effective geopolitical angle down the road.<sup>56</sup>

In the following years after ChAFTA's inception, China's economic relations with Australia only deepened as it made a concerted effort to expand trade dependencies. Between 2015-2020, the value of Australia's exports to China doubled from 75 billion dollars to 150 billion dollars. To this day, China is Australia's biggest trading partner in goods and services, receiving over 40% of goods exported from the country.<sup>57</sup>

Since 2018, despite burgeoning economic interdependence, diplomatic ties between the two countries started to deteriorate as Australian leadership began expressing concerns regarding China's political influence in their domestic affairs.<sup>58</sup> Specifically, Australia was apprehensive about China's involvement in their 5G infrastructure rollout, even going as far as to ban Chinese companies such as Huawei from participating in their network development. Similarly, other issues, such as Australia's outspoken condemnation of the Uyghur genocide and Hong Kong's national security law, contributed to the worsening ties between the nations.

China's response to these criticisms was austere, immediately exploiting Australia's over-reliance on Chinese exports by

imposing exorbitantly high tariffs. For example, in late 2020, China instituted a provisional tariff of 212% on Australian wine as well as enacted a total import ban on beef, coal, seafood, and cotton.<sup>59</sup> The economic ramifications of these restrictions were astronomic as Australia estimated their losses to be around 785 million dollars a year.<sup>60</sup> The imposition of such destructive trade tariffs reflects Beijing's coercive economic efforts to alter the political behavior of Australia.<sup>61</sup> As Canberra's international concerns began to mimic those of the West, China looked to utilize ChAFTA as a means to steer Australia towards more China-friendly policies. Recognizing Australia's lack of import diversification, Beijing

Beijing.<sup>63</sup> The consideration of low-stake financial consequences for China was not concealed in the negotiation process, with the Trade Minister of New Zealand even publicly stating, "China clearly wants to gain experience in bilateral agreements, and we are a risk-free option."<sup>64</sup> Beijing saw New Zealand as a non-threat, both economically and politically, and it contributed to their decision to move forward in establishing an FTA.

However, the relative disparity between the two economies did pique interests among economists who questioned why China was expending valuable time and resources on an FTA with a relatively limited island

*Recognizing Australia's lack of import diversification, Beijing leaned heavily on its established bilateral trade relationship to push favorable policies and ensure Canberra's geopolitical strategy remains auspicious to China's interests in the Pacific.*

leaned heavily on its established bilateral trade relationship to push favorable policies and ensure Canberra's geopolitical strategy remains auspicious to China's interests in the Pacific.

### ***New Zealand***

At the time of the agreement, New Zealand offered economic compatibility that matched well with China's interests. New Zealand presented key agriculture technologies as well as a welcoming environment for foreign investment, two aspects of trade that China was keen on finding in an FTA partner.<sup>62</sup> More importantly, the New Zealand economy was only 4.8% of the size of China's and made up only a fraction of their imports, which meant that the establishment of a bilateral trade agreement would be a relatively safe option for

economy.<sup>65</sup> Beijing's clear political and diplomatic ambitions assuaged any doubt regarding their motivations to engage in an FTA, given their interests in New Zealand's unique role as a China-friendly Western nation. Not only did New Zealand advocate for China's WTO membership dating back to 1997, but they also were the first Western country to recognize China's market economy.<sup>66</sup> China's decision to integrate New Zealand into their FTA playbook was not necessarily a move of reciprocity, but it was a recognition by Chinese leadership that New Zealand was at the forefront of pro-Chinese sentiment from the West.

Initially, the decision to introduce trade negotiations with New Zealand paid off as it sparked several other nations to start evaluating China's claim as a market economy, including the United States and EU.<sup>67</sup> After years of negotiations riddled with political

roadblocks, the two countries finally formalized bilateral trade relations in 2008 with the creation of New Zealand-China FTA.

Following its implementation, China became New Zealand's second-largest trade partner with both nations using their newly formulated FTA as a platform to deepen political, societal, and diplomatic ties.<sup>68</sup>

However, since the FTA's establishment, there have been growing concerns regarding China's meddling in the domestic affairs of New Zealand. In 2018, a prominent leader of New Zealand's opposition party was recorded admitting he had accepted a substantial financial contribution from a Chinese donor in direct violation of domestic campaign finance laws.<sup>69</sup> The spotlight drew attention to the growing issue of political integrity being compromised by Chinese actors, even revealing evidence that the current mayor of Auckland had accepted campaign donations from wealthy Chinese elites.<sup>70</sup> These efforts occurred in the backdrop of New Zealand's 5G campaign in which they shared international concerns regarding Huawei's involvement, even deciding to turn down a contract with the Chinese company while

In search of enhancing economic and diplomatic interests overseas, China sought to establish trade liberalization with New Zealand. Moreover, Beijing looked to use this bilateral trade engagement as a steppingstone to deepen relations and create channels of access to influence the political landscape of New Zealand.

A fundamental framework of Chinese foreign policy is the concept of "peaceful development," which asserts that China's ascension to international hegemony can be advantageous to other countries rather than a threat to their current system. This notion is essential in understanding China's strategy in CRTAs. By establishing transnational trade relations, China can drive domestic economic growth, influence political decisions, and stealthily promote its international interests. In doing so, China develops a powerful international voice while avoiding conflict that can jeopardize their pathway to hegemony. Beijing has remained committed to this approach, evident through the eleven CRTAs they currently participate in worldwide.<sup>72</sup> As China sees it, the initial bilateral relationships with New Zealand and Australia were largely successful in their purpose, signaling to

*China's decision to integrate New Zealand into their FTA playbook was not necessarily a move of reciprocity, but it was a recognition by Chinese leadership that New Zealand was at the forefront of pro-Chinese sentiment from the West.*

rolling out their network.<sup>71</sup> The coincidental nature of China's targeting of local officials raised concerns that they were attempting to influence domestic affairs to sway policy decisions in Beijing's favor. The validity of these accusations remains unclear. Nevertheless, its role in the evolving relationship between China and New Zealand provides strategic insights into Beijing's FTA pursuits.

Beijing that these relationships should be expanded upon as they are effective tools for executing foreign policy objectives. As discussed above, there are key distinctions in China's FTA process. However, China's efforts to utilize FTAs as a political tool to enhance international influence are not unique. Evidence suggests that Japan, the United States, and other major economic

powers engage in trade relationships for similar reasons. That said, the lengths in which China is willing to go to use FTAs as a channel to acquire diplomatic power, as well as the subsequent role it plays in infringing in the domestic affairs of its partnered nations, differs greatly from other hegemonic powers.

partners. As light is shed on China's coercive economic tactics and its interference in the domestic affairs of its trade partners, countries will become hesitant to engage in an FTA relationship.

Similarly, China may start to see more of an active response by its regional and cross-regional adversaries to undermine its FTA

*CCP leadership has seen the geopolitical success of FTAs and has decided to put international trade at the helm of their foreign policy strategy.*

## **Conclusion**

China has reached a critical juncture in its international trade strategy. Beijing's twenty-year history of using FTAs as an economic means to acquire diplomatic power and geopolitical influence implies that they have considered it an effective foreign policy instrument thus far.

However, whether China sees the historic achievements of FTAs as an indicator for future success remains uncertain. To better understand the impact of FTAs in future endeavors, China must determine if economic governance is the most impactful tool in furthering its foreign policy objectives. First, China needs to consider the magnitude of its global power and decide if economic concessions are still essential for fostering political influence. Like other international leaders, China now has an arsenal of geopolitical and diplomatic weapons that it did not possess at the beginning of its FTA history. Therefore, Beijing no longer needs to create unnecessary economic vulnerabilities in order to garner international influence. Secondly, China must determine if the strategic value gained from FTAs justify the increasing difficulty Beijing may face in finding willing

efforts. As the political reach of Beijing grows, other superpowers will become assertive in their attempts to impede China's progression, making it difficult for Beijing to establish partnerships.

China's current trajectory suggests FTAs will be a vital component of future foreign policy strategy. Whether Beijing has grappled with these potential concerns remains unknown, but recent events indicate that they bear little weight on China's path forward. At the Davos summit in 2017, Xi Jinping stated, "We must promote trade and investment, liberalization and facilitation through opening up – and say no to protectionism."<sup>73</sup> CCP leadership has seen the geopolitical success of FTAs and has decided to put international trade at the helm of their foreign policy strategy. In January 2022, the Regional Comprehensive Economic Partnership (RCEP) took effect, officially designating China as the leader of the world's largest trade deal.<sup>74</sup> In the context of China's FTA legacy, this multilateral agreement demonstrates the value Beijing places on economic diplomacy and its ability to deliver geopolitical and diplomatic victories abroad. Moreover, it reveals that China will continue to explore the boundaries of FTAs and their subsequent function as a Chinese foreign policy tool.

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# *With Great Power Comes Great Responsibility: Chinese Corporate Social Responsibility in Ghana and Kenya*

***Abena Oduro***

## ***Introduction***

Since the Bandung Conference in 1955, when many newly independent Asian and African states gathered for the first time to promote economic and cultural cooperation, China has paid special attention to deepening its friendship with African leaders and creating a positive image across the continent. China's search for natural resources to power its ever-growing economy led to a rapid increase in the number of Chinese state-owned enterprises (SOEs) and private firms making investments in resource-rich African countries. In the 15 years between China's entry into the WTO in 2001 and 2016, China became the largest investor in Africa with total investments of about \$40 billion.<sup>1</sup> However, China's efforts to promote friendship with Africa might be masking its responsibility to promote better governance in its firms on the continent. One way in which Chinese officials should promote better leadership in Africa is through the effective implementation of corporate social responsibility (CSR) for Chinese SOEs operating in Africa. Chinese firms in Africa are starting to sense the need to be more responsible to protect their investments and the goodwill of local

populations where investments are located. While there have been multiple laws passed in China to accompany its "going out" policy, there is still a significant lack of Africa-specific CSR objectives in both Chinese SOEs and private businesses in Africa. The Chinese government and companies in Africa have the task of responding to the three major areas of concern – labor, corruption, and environment – through CSR. Though some progress has been made, there are many cases in which CSR is still lacking. This paper will discuss the efforts made by the Chinese government, officials, and businesses in Africa to promote and implement CSR through case studies of resource extraction and infrastructure projects. After discussing the main issues facing Chinese CSR, such as a lack of transparency, poor implementation, corruption, and cultural/social incompetence, this paper will suggest avenues for improvement.

## ***Framing Corporate Social Responsibility in Africa***

CSR is generally defined through identifying stakeholders in each project beyond the firms, governments, or financing institutions involved. CSR contends that the interests of the local communities as well as the larger global community should be considered in every project (especially when considering environmental impact). According to Abdalla, a responsible business has CSR goals that are "contributing to the sustainable development of the local community, environment and working hard to improve the life quality of the society."<sup>2</sup> Chinese firms in Africa that have CSR guidelines use a similar framework. Their general CSR goals are to give the highest amount of benefit and the least amount of harm to all stakeholders. But, due to a lack of extensive, project-specific CSR, the interests of the local people are not well considered. Moreover, Chinese SOEs have multiple stakeholders including the Chinese banks that finance their projects, the Chinese government, and various African governments. Often, the state's interests override

the public's interests. Protected by the corruption of local governments, firms often prioritize economic benefit which conflicts with and is more valued than social welfare and environmental protection.

The case of the Atewa Bauxite mining project in Ghana provides one of many examples of the costs of neglecting CSR in Africa. In the Atewa Forests of Ghana, an estimated 350 million tons of bauxite, a precious mineral used in aluminum production, lay yet to be extracted.<sup>3</sup> Despite countless warnings about severe environmental, social, and economic impacts, the Ghanaian government maintains its intention to extract these minerals, only possible through robust financing from a Chinese hydropower engineering and construction SOE, Sinohydro. Sinohydro has been a partner in developing renewable energy infrastructure in Ghana through bilateral and multilateral initiatives like the pioneer hybrid solar and hydroelectric power station in Bui.<sup>4</sup>

In 2018, China's Sinohydro signed a controversial \$2 billion deal with the government of Ghana to extract bauxite from the Atewa Forests. The money will be provided through a loan that Ghana will pay back through revenue from the bauxite sales. While scholars call this arrangement a resource-backed loan (because it has concession rates and maturity periods, among other elements), the government of Ghana is adamant in referring to this as a "barter deal" since Ghana will repay Sinohydro with revenue from bauxite extraction.<sup>5</sup> By referring to this arrangement as a barter deal, the government of Ghana is dismissing concerns about the transparency of financing this project. Moreover, China is acting as both the buyer and seller, adding to concerns about transparency, a major CSR aspect. Transparency aside, the project poses significant environmental and economic risks. The Atewa Forest is home to rare species of butterflies, frogs, and trees. It also is a source of 3 rivers which provide water to about 5 million Ghanaians.<sup>6</sup> Strip

mining bauxite will leave large craters in the land and pollute rivers with mud, forcing the relocation of forest dwellers and endangering rare forest species. Furthermore, the project will put significant pressure on local cocoa farmers to sell their land, though cocoa is the third main export of Ghana.<sup>7, 8</sup> There is an austere trivialization of the environmental impact of this project bolstered by the government of Ghana's denial of serious potential effects.

Ghana struggles with a high debt-to-GDP ratio of 57% and only graduated from a four-year IMF inflation relief program in 2019.<sup>9</sup> Though President Nana Akufo-Addo is pushing for a "Ghana Beyond Aid," projects with China like the Atewa bauxite extraction threaten its already precarious financial position and increase its debt to China. In protest of this program, in 2018, Ghanaian activists carried water from the forest and walked for six days from Atewa to Accra. The protests hurt China's image in the minds of the Ghanaian people who believe it is taking advantage of the corruption of the government to extract these minerals. Here again, the Ghanaian people's interests were not considered. Already, when it comes to Chinese mining, Ghanaians are very sensitive – many Chinese nationals have been violently attacked and arrested in connection to illegal mining which has already polluted several waterways.<sup>10</sup> This sensitivity has the potential to damage Ghana-China relations, and SOE deals like Atewa further anger the Ghanaian public. This project exemplifies an absence of CSR and has led to negative reactions to China.

China should encourage responsible leadership, not just friendship with African governments. As mentioned before, China's need for natural resources has driven it to become a major investor in the construction and mining sectors of Africa.<sup>11</sup> Furthermore, through the Belt and Road Initiative (BRI) and the Maritime Silk Road Initiative (MSRI), China will continue to invest in construction, mining, and trade

in Africa for the foreseeable future. The mining industry is inherently destructive to the environment. Mining causes severe environmental impacts and construction requires land acquisition which can be harmful to local populations. In many projects, China acts as both the financier and the buyer, raising corruption concerns. Finally, many scholars report incidences of labor abuse and poor communication between Chinese managers and local employees. Since China's reputation in Africa is increasingly damaged as a result of these negative outcomes, Africa-specific CSR is extremely important as part of the measure to protect the sustainability of China-Africa relations. While China enjoys generally positive relations with African governments, often at the expense of the local people, there are indications relations can change without a stronger CSR policy. If public concerns persist, governmental goodwill too can change in response. For example, in 2006, a Zambian presidential candidate called Chinese mining companies "slave labor" and Chinese investors "infesters."<sup>12</sup> The risk of negative public opinion influencing the behavior of African government officials is a real threat to China in Africa.

of aid, and illegal and unethical environmental practices. International bodies and NGOs also share similar concerns about China's presence in Africa. May Tan-Mullins and Giles Mohan write that

*"At the international level, global financial institutions along with growing pressure from civil society organizations are encouraging China to demonstrate a commitment to addressing the environmental impacts of its overseas projects..." and to avoid the "cynical use of aid and other political largesse... that undermines international norms around environmental protection and governance."*<sup>13</sup>

### ***Historic and Current CSR Efforts***

The Chinese government and Chinese SOEs have tried to be responsible for their projects. First, the Chinese government and officials have recognized the need to be more socially responsible in general (not specific to Africa). Tan-Mullins and Mohan outline a series of government documents and announcements accompanying China's

*The risk of negative public opinion influencing the behavior of African government officials is a real threat to China in Africa.*

Scholars argue that the key issues that shape African popular opinion about Chinese firms – and the issues that should be considered in the framing of Chinese CSR objectives – are as follows: exploitation and abuse of local labor, displacement of local labor through imported Chinese labor, financial corruption and the coercive use

"going global" and "going out" policies that reflect this understanding.<sup>14</sup> In 2003, China released the Scientific Development Concept (*kexue fazhan guan*, 科学发展观) under President Hu Jintao. This document encouraged all Chinese ventures to promote "social harmony" (*shehui hexie*, 社会和谐) and consider how to benefit all people

to the best of their ability. For instance, in 2004, the China Exim bank developed a green credit system that granted priority to firms that had better environmental protection ratings. Through this system, it finances firms' projects abroad that might have better environmental and social outcomes. Particularly in East Africa, there are such firms funded by China Exim Bank with relatively clear and measurable CSR efforts in planning and executing construction projects. Then, in 2006, the Company Law urged all Chinese companies to exercise moral business practices, be subject to government and public supervision, and "undertake social responsibilities."<sup>15</sup> In 2008, the State-Owned Assets Supervision and Administration Commission (SASAC) issued guidelines to all Chinese SOEs to identify people as stakeholders and create people-focused CSR outlines which consider environmental, social, and scientific development in their profit-making models. Yet, up until now, these guidelines have been non-binding. Nevertheless, the increase in legislation encouraged 200 Chinese companies to join the UN Global Compact in 2008.

The government of China has made some efforts to acknowledge the global responsibility of Chinese firms and, to a lesser extent, their responsibility towards Africa. There have also been CSR efforts by specific firms and financial institutions. In 2009, China showed the first high-level Africa-specific CSR commitment. At the Forum on China-Africa Cooperation (FOCAC) meeting, Premier Wen Jiabao indicated China's commitment to investing in green technology (solar and hydropower) and environmental protection. In 2013, the PRC released the non-binding "Guidelines on Environmental Protection for China's Outbound Investment and Cooperation," which outlined 22 points under which Chinese firms abroad should frame their CSR objectives.<sup>16</sup> Between 2015 and 2017, the PRC released seven documents providing guidance on agriculture, energy, environmental cooperation, development, financing, and

promoting the BRI and MSRI. Yet, according to the Inclusive Development Report (2019), these guidelines were still "not binding, but they are issued by high-level state institutions, and are an important part of China's narrative that it is actively seeking to improve the quality of investment within the BRI."<sup>17</sup> These legislations have had some positive effects on investment projects, as was the case in the Mombasa-Nairobi Standard Gauge Railway project.

### ***Mombasa-Nairobi Standard Gauge Railway (SGR)***

The Mombasa-Nairobi Standard Gauge Railway project was implemented between 2014 and 2017 for an estimated cost of \$3.5 billion.<sup>18</sup> The Chinese SOE involved, China Road and Bridge Corporation (CRBC), is committed to CSR objectives of ensuring project quality, promoting green technology and education, protecting the local ecology, and respecting the local culture. The effectiveness of its project-specific efforts will be analyzed through the lens of successful CSR objectives outlined above: protection and promotion of local labor, ethical financing and aid provision, and adequate social and environmental considerations.

In this project, CRBC was committed to including local firms and labor into the project to address concerns about the Chinese displacement of local employment. CRBC involved local small and medium-sized firms in supply chain logistics instead of importing materials solely from China. Zhao writes that CRBC's impact on local labor participation was so significant that it was second only to the Kenyan government. As of 2016, the project employed 38,000 Kenyans and trained 19,000 workers and 4,000 technicians.<sup>19</sup> CRBC paid special attention to producing positive labor outcomes for local Kenyan people and received praise for its efforts. In addition to positive labor outcomes, the main funder of this project, China Exim Bank conducted an environmental impact assessment (EIA)

on the project before approving funding. This included an evaluation of “pollution, health problems, land acquisition problems, and forced resettlement.”<sup>20</sup> Liu argues that political pressure applied by the PRC—due to the significant international attention to this project—may have contributed to this positive outcome and China Exim’s actions.<sup>21</sup> In conjunction, CRBC also paid special attention to environmental and social outcomes, protecting the surrounding environment and improving the

First, CRBC preferred to work with local government officials and only in a limited capacity with civil society, breeding some suspicion in the local media.<sup>23</sup> Second, CRBC sponsored projects outside of the direct scope of the railway, namely through scholarships and development infrastructure projects. These factors create a new avenue of concern, such that potentially socially or environmentally harmful projects may be offset by generally positive philanthropic gestures outside of the project. In

*... successful CSR formation must consider the stakeholder framework, in which all stakeholders – in this case, the local people – must perceive benefits from the project.*

standards of living for local people. According to the 2017/2018 Kenya SGR Project Social Responsibility Report, the CRBC conducted vegetation restoration events and consulted local environmental experts in the design of the project. They sponsored the construction of development infrastructures like roads, schools, and boreholes. Finally, they provided scholarships to 100 undergraduate Kenyan students to study at the Beijing Jiaotong University.<sup>22</sup> Through a mix of scholarships and affiliated environmental and developmental projects, CRBC demonstrated a sizable commitment to CSR. CRBC’s success in this project stemmed from clear communication, specific implementation, and open reporting. Thus, it received positive feedback from local people. The SGR project demonstrates that this project-specific CSR in collaboration with local people benefits China’s image abroad.

While generally successful, the SGR project reveals two specific issues with current trends in Chinese CSR: limited civil engagement and unconventional philanthropy.

addition, CSR goals can seem arbitrarily defined and executed through means outside of the project’s focus without sufficiently emphasizing environmental protection or transparency. The success of this project was thus tempered by the unconventional nature of CSR implementation. Similar issues exist in Chinese CSR across Africa.

### ***Issues Facing Current CSR Efforts***

Lessons from the Atewa Bauxite mining case and the Mombasa-Nairobi Standard Gauge Railway project provide an understanding of major issues facing Chinese private firms’ and SOEs’ efforts: negative local perceptions of China’s presence, transparency of reporting and implementation, corruption, state-centric implementation, and innate project issues.

#### ***Negative Local Perceptions***

Despite legislative and private efforts to enforce CSR in Africa, China still faces



major issues in maintaining a good reputation amongst the African locals. First, perceptions of China's presence by local people are a key indicator of the implementation of CSR. Seriki argues that though some companies report their successes in CSR implementation, if these benefits are not perceived by local people, CSR has failed.<sup>24</sup> In other words, successful CSR formation must consider the stakeholder framework, in which all stakeholders – in this case, the local people – must perceive benefits from the project. Hanauer and Morris suggest that the African opinion is highly dependent on the observed labor practices, infrastructure improvements, standard of living, and the involvement of local firms.<sup>25</sup> In a 2010 survey of over 20 African countries, the authors found that two times more Africans saw China favorably than those who did not.<sup>26</sup> However, as Chinese imports increased and displaced local products, this positive view soured. Diminishing positive views are also compounded by the lack of transparency in local governments, which local people believe feeds off corrupt Chinese deals. The Atewa bauxite mining project case is a clear example of these falling perceptions. Though multiple independent sources warned of environmental issues surrounding the strip mining of bauxite, the Ghanaian government ignored these claims. Sinohydro's lack of or inadequate CSR did not address these concerns either, angering local people.

In Nigeria, a similar perception of Chinese firms exists. In the same study, Seriki surveyed 114 Nigerians on their perceptions of Chinese firms' CSRs around these five measures: transparency, protection of landmarks and property, respect for local laws, quality, environmental protection, and workers' welfare. The results of this survey showed that Nigerians believed that Chinese firms' CSR fared least well in the areas of environmental protection and workers' welfare.<sup>27</sup> These two issues are often lines of criticism against Chinese firms across Africa, especially in the mining

sector. In addition to export penetration, poor employment, and environmental outcomes, scholars mention that there is a level of cultural incompetence that discolor China's image in Africa. Tan Mullins argues that the burden of communication and development of specific project CSR guidelines often falls on managers who are not trained to handle complex social and cultural contexts. These managers have poor communication with local people and employees and, in many cases, the inability to translate between Chinese and local languages.<sup>28</sup> With African sensitivities to Western exploitation, any form of abrasive or perceived aggressiveness can be negatively received.

### ***Transparency of Reporting and Implementation***

The second issue facing Chinese firms is that the transparency of CSR reports and implementation is often called into question. First, African governments often leave a vacuum in EIAs and other critical assessments when undertaking projects. Because of the vacuums, scholars observe an overall lax attitude towards CSR transparency in Africa. There are two aspects to this attitude: First, implementation and evaluation of CSR objectives are handled exclusively by Chinese researchers with little contribution from local researchers.<sup>29</sup> Second, many companies simply do not have publicly outlined CSR objectives, as exemplified with Sinohydro in Ghana's Atewa bauxite mining project. This might reflect a general lack of CSR in Chinese firms across the globe. In 2020, of the 77 million Chinese enterprises across the globe, only 3,043 CSR reports have been released, and most of the recent reports do not mention Africa.<sup>30</sup> Without public CSR reports, local people and researchers find it difficult to understand whether Chinese firms are truly committed to the betterment of society, the environment, and the standard of living. The public CSR reports are one aspect in which the Mombasa-Nairobi Standard Gauge Railway project succeeded compared to the

Atewa Bauxite project. Carrai argues that “Chinese state-owned enterprises financing and building the railway exhibited strong awareness of Kenya’s CSR requests, publishing reports and interacting with the local media and community.”<sup>31</sup> Because CRBC invested more effort into transparency, the project received relatively better responses from local people.

### **Corruption**

A third issue, and perhaps most pertinent for Chinese officials, is corruption. There are multiple examples of poor governance and few attempts by Chinese companies to address these issues. Here, the enforcement of CSR is key, because it will prevent China from becoming a scapegoat for the corruption of African leaders. Though projects may not necessarily be corrupt, China’s often dual role as the buyer and financier raises suspicions of corrupt financial practices. The Atewa bauxite case is an example of this arrangement. These concerns are further justified by a lack of transparent reporting. Instead of setting clear CSR objectives, Chinese firms are often caught colluding with leaders or landowners at a high level to their benefit. For example, Chinese firms have been reported for not paying landowners adequately or at all when acquiring land for construction projects in East African Maritime Silk Road projects.<sup>32</sup>

Corruption cases are often tied to natural resources as is the trend in Angola-China relations. Angola and China have very strong trade relations, mainly anbasedao on crude oil exploration and extraction. According to the Observer of Economic Complexity (OEC), in 2019, Angola exported \$20.5 billion worth of goods to China, \$20 billion of which were crude petroleum.<sup>33</sup> A major partner in the extraction of this oil is SINOPEC, a Chinese SOE. Since the discovery of oil, Angola’s economy has been growing but is highly dependent on oil exports. The profitability of oil has encouraged bad governance and exclusion of the Angolan

public in oil extraction projects. According to Tan-Mullins and Mohan, the greed and competition between the Angolan elite breed an environment of high secrecy in dealings with the Chinese SOE.<sup>34</sup> This lack of public accountability pushes local opinion out of the project and ignores a key aspect of CSR. As of 2013, there had been no EIA made on the project since it started in 2004, and it was speculated that SINOPEC may not be under the same CSR restrictions as other firms in Angola. In 2015, SINOPEC came under investigation by Chinese officials for bribery and corruption with Angolan officials between 2011 and 2015.<sup>35</sup> While this firm became a target of China’s anti-corruption efforts, a similar story exists across different cases in Africa. The tendency for Chinese firms to conform to local business practices can reinforce ongoing corruption and implicate Chinese firms in controversy. Carrai argues that this “adaptive governance” on the part of Chinese companies is harmful to Chinese CSR.<sup>36</sup> This is likely due to the state-centric approach of Chinese CSR.

### **State-Centric Implementation**

The implementation of CSR is marred by excessively broad policy objectives and the voluntary, non-binding ethical underpinnings of Chinese CSR legislation. Tan-Mullins argues that the voluntary nature of CSR often makes it hard to ensure adherence and quantify results.<sup>37</sup> A lack of enforcement at the state level further contributes to the “adaptive governance” of Chinese firms and creates avenues for corruption. This is especially the case for China’s state-centric approach to CSR when it does not specify approaches based on the unique circumstances of each project. Liu analyzes the nature of China’s state-centric model, pointing out some key limitations it places on the implementation of CSR.<sup>38</sup> In the usual case, CSR is fueled by market demand created by a pool of educated consumers, but generally, African market forces are not as measurable. Thus, even local firms do not pay too much attention

to their own CSR. In this situation, international voices should play a larger role in creating the demand for social responsibility. Yet, Chinese banks fund many of the investments in Africa and are loyal to the domestic Chinese demand – feeling little pressure to design and enact CSR.

In cases where Chinese CSR has been implemented, like the Standard Gauge Railway project in Kenya, the state-centric approach led to some unexpected negative consequences to China's image. The broad strokes of the foreign investment CSR legislation did not fully estimate the Kenyan context. CRBC preferred to work with local officials instead of NGOs because it is required to work with the Chinese government when it conducts projects at home. This arrangement drew suspicion from the local media because it excluded civil society from assessing the impact of the project. Though the project had successful CSR outcomes, it demonstrated the lack of social and contextual understanding on the part of Chinese SOE. Liu argues that the Standard Gauge Railway project "evidences a lack of input from civil society, which is a major weakness of the state-centric approach."<sup>39</sup> While state-led efforts are important, these cases demonstrate a need for a deeper understanding of the social context of each project.

### ***Innate Project Issues***

Finally, some innate issues cannot be helped based on project type. The issues stem from China's heavy involvement in the natural resource extraction sector in Africa which has innately negative impacts on the environment. As was the case in the Atewa Bauxite mining project, mineral mining – if it must happen – causes polluted waterways, relocation of local people, and wildlife endangerment. Yet, to fuel its growing economy, China has looked to African reserves of these minerals, which can explain why Chinese firms often do not stipulate clear environmental assessments in their CSR objectives and prefer to

focus on human capital and employment outcomes. Moreover, China requires huge amounts of crude oil and other non-renewable sources of energy to power its ever-growing economy. The use of these compounds increases carbon emissions and is counterproductive to its efforts to establish itself as a green-conscious leader.

Turning to the African BRI and MSRI projects, China aims to increase avenues of trade and open African markets even more to its exported goods and has been doing so to a large extent. Seriki writes that "Chinese firms have emerged as one of the strongest contenders in the African market... aiming at increasing the export of Chinese products and services."<sup>40</sup> Though BRI construction companies may report CSR and employment creation within the length of their specific projects, projects that open African markets to Chinese import penetration cause concerns of long-term employment loss. Brautigam et. al find in their research from 2011 to 2015 that only 5-6% of workers in Chinese firms in Africa were imported labor, a similar rate to Chinese presence in the rest of the world.<sup>41</sup> On average, for every million dollars of project value, China deployed 3-4 Chinese workers, and about 87% of workers in Chinese firms in 2014 were local. Indeed, short-term Chinese FDI has contributed to job creation. However, Chinese import penetration from 1992 to 2010 is estimated to have caused the potential loss of 145,000 jobs in South Africa alone, about 45% of the total job loss during that time.<sup>42</sup> The short term and long-term effects of Chinese projects in Africa present an innate problem that may not necessarily be solved with rectification of current CSR approaches.

### ***Rectifying Current CSR Approaches in Africa***

To efficiently rectify current CSR approaches in Africa, Chinese officials must first understand the importance of these issues. By

ignoring or maintaining the current trends in Chinese companies' engagements with local people, China runs the dual risk of worsening public reactions to its presence in different countries in Africa and presenting itself as an irresponsible global leader. As China emerges as a major world power, it is tasked with navigating a conflicting identity. In the context of CSR, China is both projecting an image of friendship with African leaders and people while funding projects that may deteriorate their local ecosystems and social welfare. This dichotomy must be addressed through CSR rectification.

Based on the issues laid out above, scholars suggest a range of foreign policy adjustments that China can use to better its CSR footprint in Africa. The first issue of negative local perceptions might be best addressed through soft-power proliferation and better cultural competency training for Chinese workers sent to African countries. As emphasized by President Xi Jinping in 2013, there is a growing need to "tell China's story well" (*jìnghào zhōngguó gùshi*, 讲好中国故事). By expanding China's presence in Africa through non-economic or political means, China might be able to create a better impression in the minds of African people. Abdalla argues that there is a greater need for people-to-people exchanges and new social platforms for Chinese people to engage with civil society and local African people.<sup>43</sup> In the same vein, Chinese officials should invest in better cultural awareness training for SOE managers of African projects. If managers are made aware of the cultural contexts and social norms in the locations where they will be working in, they will be less likely to continue the pattern of bad communication and unsuitable CSR objectives. Moreover, hiring local staff that can aid in translation and people-to-people interactions should be a key goal of Africa-specific CSR development. Simultaneously, this increased cultural sensitivity will benefit Chinese soft power across African countries.

Regarding the problem of transparent CSR reports, the Chinese government should encourage and consider enforcing mandatory CSR reporting from their SOEs and private businesses in Africa. As of 2021, CSR legislation from China has been non-binding and contributes to the general lack of communication. Yet, these shortcomings do not have to be the case. China can create legislation that holds its firms to international standards of operation and CSR by "direct collaboration with companies, participation in international organizations, and involvement in dialogues about CSR with other stakeholders."<sup>44</sup> This collaboration will prompt firms to communicate more transparently about their outcomes which will allow for clearer assessments of Chinese CSR's effectiveness. Without transparent reporting, scholars and relevant stakeholders cannot ascertain Chinese firms' commitments and progress in promoting economic, social, and environmental objectives. Addressing this lack of transparency may reduce negative sentiments around Chinese investment projects and protect China's interests in investing in Africa. Next, the problems of corruption and state-centric CSR formation should be urgently addressed. Tan-Mullins argues that local people are extremely sensitive to a lack of transparency and any signal that Chinese firms might be ignoring their local laws.<sup>45</sup> To avoid this problem, Chinese SOEs might benefit from working directly with civil society organizations like NGOs alongside the local governments or officials. Working with civil society will help to dispel fears that the local governments prefer to work with China so that they can continue corrupt practices away from the public eye. This practice was the case in the Standard Gauge Railway project which raised local suspicions about CRBC. Liu agrees that "to correct the weakness of the state-centric approach, it is important to encourage the Chinese government and its affiliated institutions to become more involved with civil society."<sup>46</sup> By stipulating negative consequences for excluding local civil society, the Chinese government

can deter companies from “adaptive governance” which encourages corruption. Furthermore, engagement with civil society will refine CSR objectives and benefit China’s image in the eyes of local people.

To address the innate environmental concerns of the mining and construction sectors in which China is so heavily involved, China should consider diversifying its presence and mandating higher standards of EIA in its investments in African countries. While it pledges green technology, China still extracts copious amounts of natural resources in ethically question-

negative outcomes. So, to encourage responsible leadership, Chinese firms must have rigorous CSR objectives compiled by both Chinese and local authorities that identify the African person as the major stakeholder and have clear, measurable results. China’s historic efforts in this regard fall short in many cases. Sinohydro’s deal with the Ghanaian government is a clear example of a lack of Chinese CSR planning, bad governance, and poor environmental outcomes sparking rage against China. This example represents a widespread problem in Africa that can be addressed through proper CSR formation.

*China must place itself as a world leader that cares not only about economic benefits but human development and environmental protection as well. Corporate social responsibility is a key part of this image that China must now project.*

able projects. By using the BRI and MSRI initiatives, China has a great opportunity to contribute to the manufacturing industries in African countries. Abdalla argues that the manufacturing industry is a potential field of investment since, as of March 2019, 26 African countries had already expressed a deep commitment to improving their industrial sectors.<sup>47</sup>

## **Conclusion**

For a sustainable China-Africa relationship China needs to address growing environmental, social, and reputational concerns about its presence in Africa. China must place itself as a world leader that cares not only about economic benefits but human development and environmental protection as well. Corporate social responsibility is a key part of this image that China must now project. Proper CSR considers the interests of all stakeholders, including the local African people, and tries to minimize

There is evidence that the Chinese government and SOEs recognize the significant issues in their current approaches to CSR. Through several projects in East Africa, Chinese SOEs have implemented CSR through employee training, engaging with civil society, and philanthropic donations. Yet, the effectiveness of these specific projects is hampered by multiple issues that are present in many Chinese projects in Africa. Major issues that dampen the benefits of Chinese CSR in Africa are negative local opinion, lack of transparency, corruption, state-centric CSR formation, and innate project unsustainability. By enforcing binding CSR requirements on Chinese firms in Africa (and abroad in general), providing better training to Chinese staff, increasing interaction with non-governmental entities in local areas, promoting people-to-people exchanges, and diversifying its presence in Africa away from purely economic ties, China can significantly improve its CSR footprint in Africa.



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# *The Challenges of Implementing China's Dual Circulation Strategy*

**Justin Feng**

## **Introduction**

Since ascending to the World Trade Organization (WTO) in 2001, China has embarked on two decades of unprecedented export and investment-driven growth. To ensure sustainable growth in the long term, Chinese leadership decided in as early as 2004 to begin transitioning the economy towards a more balanced development model that featured greater domestic consumption.<sup>1</sup> Starting in mid-2020, Beijing renewed efforts to alter its development model in response to COVID-19 supply chain disruptions, Western trade protectionism, and worsening U.S.-China tensions.

to expand export production and global economic integration (“external circulation”). Under this development paradigm, internal circulation features as the mainstay and external circulation plays a supporting role. Together, the two mutually reinforcing circulations are designed to generate high-quality consumption-driven growth and robust domestic supply chains that are more resilient against U.S. sanctions and export controls.

To avoid the “middle-income trap” or Japan’s economic stagnation during the 1990s, China must rebalance its growth towards domestic consumption, which Dual Circulation promises to deliver. China’s ability to raise domestic consumption at minimal cost and become less dependent on U.S. technologies will play a critical role in determining whether it evolves into a mature high-income economy. This paper evaluates the current feasibility of the Dual Circulation strategy and lays out several key challenges to policy implementation. It finds that Dual Circulation is unfeasible in the short-term due to the strategy’s inherent contradiction, domestic political resistance, China’s current reliance on foreign advanced technology inputs, and growing pressure from the United States.

*Dual Circulation is unfeasible in the short-term due to the strategy’s inherent contradiction, domestic political resistance, China’s current reliance on foreign advanced technology inputs, and growing pressure from the United States.*

To boost domestic consumption and technological self-sufficiency, Chinese leadership introduced the Dual Circulation strategy (国内国际双循环) in May 2020 and officially adopted it as state policy in March 2021. The strategy aims to increase consumption-driven domestic demand (“internal circulation”) while continuing

The rest of this paper proceeds as follows. Section Two traces the passage of Dual Circulation through China’s policy-making process. Section Three reviews the existing literature on Dual Circulation. Section Four examines the contradiction within Dual Circulation and explains how promoting internal circulation inevitably

hurts external circulation. Section Five analyzes the political challenge of raising domestic consumption, which requires income transfers from either corporations or the government to Chinese households. Section Six highlights the significant technological innovation gap, especially in certain strategic industries such as semiconductors, that still exists between the U.S. and China. Section Seven explains how worsening U.S.-China relations potentially hurts Dual Circulation. Finally, Section Eight assesses the future trajectory of China's Dual Circulation strategy and its viability as a long-term development model.

## ***Background***

The Dual Circulation strategy first surfaced in May 2020 at a meeting of the Politburo Standing Committee, during which central leadership agreed that China must adopt a new development model based on the mutual promotion of domestic and international circulations.<sup>2</sup> Vice Premier Liu He—China's leading economic policymaker and an early conceptualizer of Dual Circulation—cited Covid-19, rising trade protectionism, populism, and other anti-globalization forces fomenting in the West as new factors in the international environment that necessitated a development model shift.<sup>3</sup> Following the meeting, President Xi Jinping quickly began promulgating the Dual Circulation strategy through all levels of the Chinese government.

In October 2020, the fifth plenum of the Chinese Communist Party's (CCP) 19th Central Committee convened to finalize the 14th Five-Year Plan before it would be formally approved by the National People's Congress (NPC) in the following March. To bolster political support for the new strategy, Xi held a high-profile meeting with economic and social policy experts several days ahead of the plenum to emphasize the pertinence of Dual Circulation in light of new external conditions.<sup>4</sup> Strengthened by Xi's personal backing, the post-plenum

communique made multiple references to Dual Circulation and highlighted the need for a new development model that prioritized quality of growth over quantity.<sup>5</sup> In the document, Dual Circulation is described as a strategy that will boost sustainable demand-driven growth, promote technological self-reliance, foster indigenous innovation, and increase investments in research and development for key technologies of the future.<sup>6</sup>

China formally adopted Dual Circulation into its 14th Five-Year Plan in March 2021 at the annual session of the National People's Congress (NPC).<sup>7</sup> In a departure from previous plans, the 14th Five-Year Plan elevated technological development to an issue of national security and raised R&D spending by 7 percent, an astonishing figure that surpassed even the military budget's 6.8 percent increase.<sup>8</sup> According to analysts, the document's heavy emphasis on critical technologies such as semiconductors, artificial intelligence, quantum information, and 5G reflected a strong desire from Beijing to reduce its dependence on the United States and other foreign countries for high-end technology inputs.<sup>9</sup> In summary, Dual Circulation worked its way through China's policymaking process over the course of ten months, from May 2020 to March 2021, and firmly established itself as a prominent long-term development strategy after the NPC stamped it into the current Five-Year Plan.

## ***Literature Review***

The Dual Circulation strategy has been analyzed by scholars through a variety of theoretical lens. Justin Yifu Lin and Wang Xiaobing analyze Dual Circulation as a national development paradigm through the lens of New Structural Economics.<sup>10</sup> They place Dual Circulation within the broader context of China's ongoing economic reform efforts to resolve capital and labor market distortions and deepening income inequality. Lin and Wang argue that

Dual Circulation's heavy focus on internal circulation has misled some observers into believing that Beijing is moving towards a more introspective, inward-looking, and closed economy. Instead, their analysis concludes that Beijing wishes to continue growing exports, deepen integration with the global economy, and selectively engage with international markets during advantageous situations, all while expanding domestic consumption and achieving technological self-sufficiency.

In contrast to Lin and Wang's New Structural Economics perspective, which utilizes a domestic development paradigm, Jude Blanchette and Andrew Polk analyze Dual Circulation primarily in the context of China's foreign relations.<sup>11</sup> From this perspective, Dual Circulation can be conceptualized as a guard against national security threats and continued global supply chain decoupling. Blanchette and Polk argue that China seeks to reduce its reliance on external inputs in strategic industries and fortify economic resilience while simultaneously engaging with international financial and technology markets when advantageous. This ambitious attempt to juggle both objectives is termed "hedged integration."

Examining Dual Circulation through a financial lens, Michael Pettis concludes that China's low consumption rates are the result of households retaining a very low share of GDP relative to the private sector and government. According to Pettis, implementing Dual Circulation will be challenging since raising wages to boost consumption would depress China's export competitiveness, thereby undermining the "external circulation."<sup>12</sup> Non-wage transfers from the private sector would have limited effects, while government-to-household transfers would be politically challenging.<sup>13</sup> The arguments advanced in the following sections will build upon Pettis' observations on Dual Circulation. In addition to the wage-consumption and household transfers dilemmas, this paper will highlight two further challenges—China's technology gap

in certain strategic industries and intensifying U.S. economic pressure—and discuss the long-term viability of Dual Circulation.

### ***The Inherent Contradiction Within Dual Circulation***

Although Dual Circulation envisions a positive reciprocal relationship between the internal and external circulations, the two approaches may actually be inherently contradictory. In theory, the strategy bolsters consumption-driven domestic demand while keeping China competitive as an exporter. Despite the strong emphasis on domestic consumption and technological self-reliance, Beijing continuously stressed that the internal and external circulations would mutually reinforce each other and lead to a more open economy.<sup>14</sup> However, empirical evidence suggests that the two circulations do not mutually reinforce each other. If anything, they are negatively correlated. When one circulation goes up, the other will likely go down.

For instance, increasing domestic consumption requires that Chinese households have more income to spend on purchases. To achieve this, Beijing will have to allocate workers a higher share of what they produce, either in the form of higher wages or deeper social safety nets. This in turn undermines export competitiveness since China's advantage heavily relies on workers being allocated a lower share of profits relative to other producing countries. A recent study using fixed-effect models of Chinese export data from 1993 to 2013 found that a 10 percent increase in manufacturing wages led to the share of pure assembly exports falling by 4.59 percent.<sup>15</sup> Author Xing Yuqing concluded that rising wages—along with the yuan's (RMB) appreciation—have diminished China's comparative advantage in assembly exports. This demonstrates that any shift in China's current development model will require a painful adjustment that leaves some actors in the economy worse off.

There is no easy remedy to the inherent contradiction within Dual Circulation. One of the two circulations will suffer, which has prompted debate in Beijing between external circulation proponents pushing for

a disproportionately low share of GDP relative to the government and private sector. Therefore, the solution to boosting consumption is to transfer income from either the government or businesses to

*There is no easy remedy to the inherent contradiction within Dual Circulation.*

further economic liberalization and advocates of internal circulation who believe that China must lessen its foreign dependence on segments of the global economy that are dominated by hostile powers.<sup>16</sup> Thus far, Beijing's solution has been to emphasize the mutually beneficial relationship between the two circulations while acknowledging that domestic circulation will play the leading role. Moving forward, the best compromising strategy would be to slowly promote domestic consumption and carefully manage shifts in export policy to avoid major structural damage to the economy. However, even doing this will hurt the external circulation, which goes back to the inherent contradiction of Dual Circulation that cannot be solved: increasing China's domestic consumption will inevitably hurt its export competitiveness.

### ***The Domestic Political Challenge***

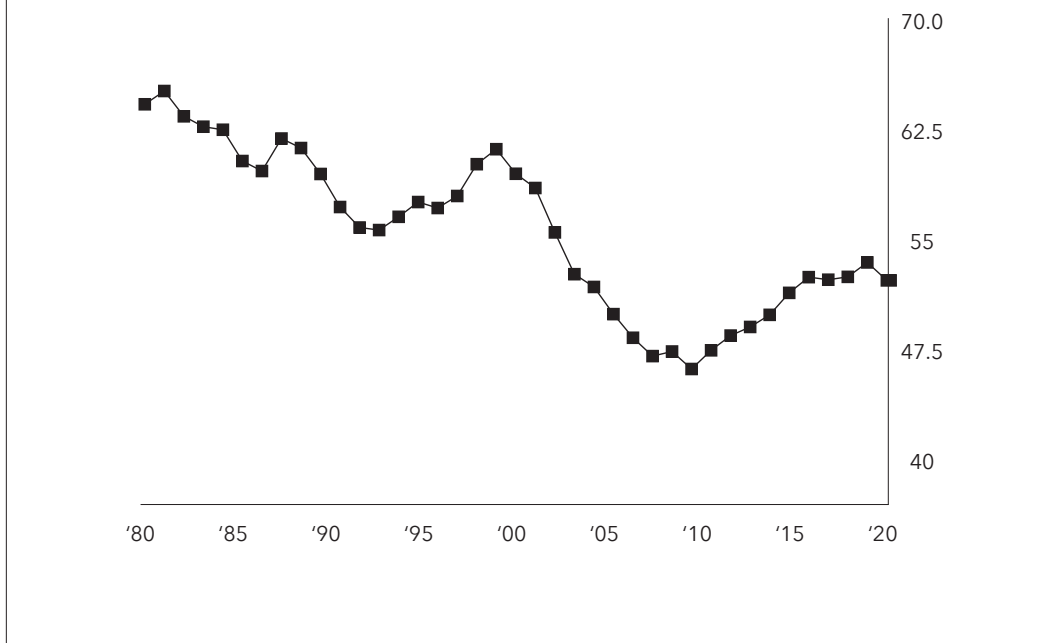
Even if one were to set aside the contradictory problem of Dual Circulation, Beijing still faces a major domestic obstacle to policy implementation. For China to raise its low domestic consumption rates (Figure 1)—which have fallen considerably since 2001 when it joined the WTO—its households must retain a higher share of national GDP. Compared to other major economies, Chinese households receive

ordinary households. However, as Michael Pettis points out, deciding which sector will absorb the bulk of transfers to households is a politically challenging task.<sup>17</sup>

Since the announcement of Dual Circulation, businesses have been encouraged to bear the brunt of income transfers under President Xi's 'Common Prosperity' (共同富裕) campaign, which seeks to lower income inequality, close urban-rural wealth gaps, and tame capitalist excesses.<sup>18</sup> In theory, Common Prosperity's wealth rebalancing goals enhance Dual Circulation by transferring income from large corporations to middle- and working-class households. Beijing has been careful to avoid transfers through wage increases—since higher wages will hurt China's export competitiveness, as noted in the previous section—and instead rely on tertiary distribution in the form of corporate donations.<sup>19</sup> To nudge its technology giants into line, Beijing also unleashed an extensive regulatory campaign throughout 2021.<sup>20</sup> The increased regulatory scrutiny has coincided with an outpouring of generous donations to charitable causes from all of China's largest technology firms, including technology conglomerates Tencent and Alibaba, app developer ByteDance, smartphone maker Xiaomi, e-commerce firm Pinduoduo, food delivery platform Meituan, and ride-hailing giant Didi.<sup>21</sup> Although most corporate

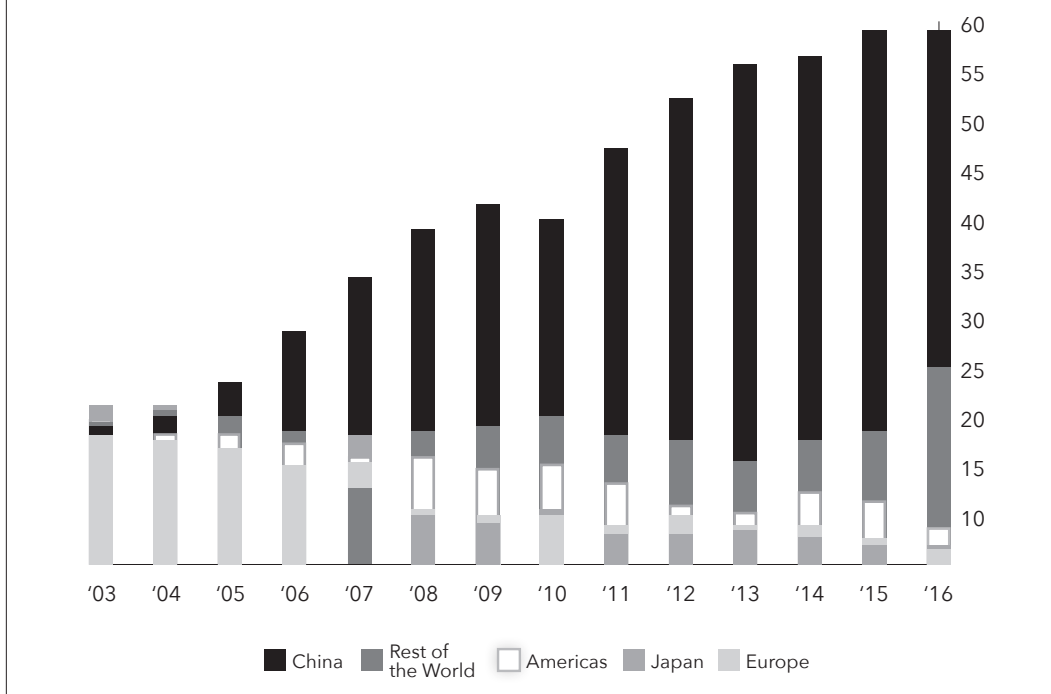
**Figure 1: Total Consumption Expenditure (%)  
as a Share of GDP in China, 1980 - 2020**

*Source: World Bank*



**Figure 2: Global Semiconductor Market Share (%)  
by Consumption, 2003 - 2016**

*Source: Fulco, 2018*



donations are not necessarily geared towards raising household consumption—popular initiatives include education, science R&D, clean energy, public welfare, and rural revitalization—some do indirectly free up household funds for consumption by alleviating general social welfare costs.

The ‘Common Prosperity’ campaign is theoretically a good solution to China’s low consumption rates since households receive higher incomes through corporate donations while export competitiveness remains unscathed from wage increases. However, Pettis provides three reasons for caution: first, Chinese corporate donations as a percentage of GDP remains low relative to other major economies and most donations do not directly raise household income; second, Beijing risks seriously undermining its private sector by forcing it to carry the burden of rebalancing income distribution; and third, the root cause of China’s low consumption isn’t actually income inequality, but rather a relatively low household share of GDP and high government share of GDP compared to other major economies.<sup>22</sup> Collectively, these reasons suggest that the government—not businesses—should be the primary actors carrying the burden of transferring income to households. In particular, local governments are currently allocated a disproportionately large share of GDP, which can be diverted to households for the purposes of achieving ‘Common Prosperity’ and enhancing the internal circulation’s domestic consumption goals.

Yet shifting the burden to local governments will introduce a new set of political challenges. A reduction in local government income would invite stiff resistance from elites and officials at the subnational level throughout China. Would central leaders in Beijing be willing—or even capable—of transferring significant political-economic power from provincial, county, and township-level officials to ordinary households? The political barriers of government-to-household transfers are clearly much higher than that

of business-to-household transfers. Even under Xi’s strong consolidation of power, problems of ‘localism’ and local-outsider differences in governance outcomes remain persistent today.<sup>23</sup> This is a historical legacy of the PRC’s ‘fragmented authoritarianism,’ where policy implementation outcomes are shaped by the interests and bureaucratic bargaining of various ‘vertical’ ministries, bureaus, and local officials.<sup>24</sup> Political fragmentation will continue to hamper Dual Circulation’s consumption-driven growth model since Chinese households currently lack the requisite income to make sufficient purchases.

### ***China’s Current Reliance on High End Technology Imports***

In addition to increasing domestic consumption, the Dual Circulation strategy seeks to reduce China’s current reliance on foreign inputs—especially from the U.S.—in key technologies such as semiconductors by making domestic innovation-driven growth a priority. Although the 14th Five-Year Plan made heavy investments in technology R&D, China will remain reliant on certain foreign inputs in the short term.

In recent years, China’s Ministry of Industry and Information Technology (MIIT) has attempted to address its technological dependency with the Made in China (MIC) 2025 Plan. The plan has two major objectives: first, to upgrade Chinese industries so that the country can occupy a higher position along global value chains; and second, to raise the domestic content of core components to 70% by 2025.<sup>25</sup> Key sectors that the plan seeks to scale up include information technology, electric vehicles, robotics, maritime and aerospace equipment, and advanced biopharma medical equipment.<sup>26</sup> Washington viewed China’s attempt to move up global value chains as a threat to U.S. productive power and adamantly rebuked MIC 2025, which has led Beijing to tone down public promotion of the plan.<sup>27</sup>



Among its core technologies, Beijing is especially concerned about microchips, an essential component of almost all modern electronics. Despite decades of government efforts to boost domestic production, China's private sector continues to import most of its semiconductor chips.<sup>28</sup> As shown in Figure 2, China leads the world in semiconductor imports by a wide margin. From a domestic perspective, semiconductors represent China's largest import by value, ahead of even crude oil.<sup>29</sup> The Trump administration's temporary ban on U.S. semiconductor exports to Chinese telecommunications giant ZTE in 2018 nearly crippled the firm since it was completely dependent on San Diego-based Qualcomm's Snapdragon processors for smartphone production.<sup>30</sup> When the U.S. Commerce Department insisted that ZTE pay fines for illegally exporting U.S.-origin technology to Iran and North Korea, the Chinese company ultimately acquiesced due to its high dependency on U.S. chip suppliers.

To avoid similar scenarios in the future, Beijing quickly moved to invest in domestic chip capabilities and listed semiconductors as a key industry in the MIC 2025 plan. Yet despite strong government funding, China's domestic chipmakers currently still lag behind their U.S., South Korean, and Taiwanese counterparts. Chinese champions—such as SMIC and Huawei's HiSilicon—have struggled to match the more advanced 5 and 10-nanometer chips of industry leaders like Samsung, Intel, and TSMC.<sup>31</sup> Although China's innovation capabilities are rapidly improving, it remains dependent on foreign suppliers of advanced chips and semiconductor manufacturing equipment. Until Beijing reaches parity in these sectors, it will be the party that suffers more severely from a U.S.-China technological decoupling. In summary, the current technology gap remains a major obstacle to Dual Circulation's self-sufficiency goals since Chinese firms remain dependent on foreign producers for key inputs like high-end chips.

### ***Worsening U.S.-China Tensions***

The final and most pressing challenge facing Dual Circulation is the ongoing deterioration of U.S.-China relations, which has resulted in tougher export and trade policies from Washington. Beginning with the Trump administration and now continuing under the Biden administration, the U.S. has utilized what Yan Xuetong calls "exclusive multilateralism" to "form issue-based coalitions in opposition to China on technology and human rights."<sup>32</sup> Biden's Democracy Summit in early December 2021 is the latest example of a U.S.-led multilateral body that purposefully excludes China.<sup>33</sup> In addition to diplomatic pressure, the U.S. has also enacted stricter export restrictions, which complicates sourcing operations for Chinese technology firms. For instance, in September 2020 the U.S. Commerce Department banned any company from using U.S.-origin technology to supply components to Huawei for its 5G equipment and mobile phones. This placed Huawei in an impossible situation since almost all components in the global supply chain have some U.S.-origin technology and Huawei lacks the capabilities to independently develop the advanced 5-nanometer microchips used in smartphones.<sup>34</sup>

At its current trajectory, U.S. regulatory pressure will only intensify as more leaders in Washington come to view Beijing as their country's foremost national security threat. In foreign policy debates, proponents of containment, Cold War analogies, and muscular responses to China's rise have gained significant traction.<sup>35</sup> These voices are further amplified by structural realist scholars, such as John Mearsheimer and Aaron Friedberg, who have spent decades warning of the 'inevitable' conflict brewing between the United States and rising China.<sup>36</sup>

On the Chinese side, most scholars believe that the narrowing power gap, ideological disagreements, changes in mutual



perceptions, territorial disputes, and economic conflicts make U.S.-China competition inevitable.<sup>37</sup> Although Chinese scholars generally acknowledge that China currently lags behind the U.S. in aggregate national strength, nationalism-fueled public confidence has been steadily building in recent years.<sup>38</sup> China's growing confidence in its capabilities vis-à-vis the U.S. has resulted in noticeable public assertiveness, or "wolf warrior diplomacy." Take for instance, Director of the CCP Central Foreign Affairs Commission Yang Jiechi's remarks towards the U.S. delegation at the March 2021 Anchorage Meetings:

*"We believe that it is important for the United States to change its own image and to stop advancing its own democracy in the rest of the world. Many people within the United States actually have little confidence in the democracy of the United States... On some regional issues, I think the problem is that the United States has exercised long-arm jurisdiction and suppression and overstretched the national security through the use of force or financial hegemony, and this has created obstacles for normal trade activities, and the United States has also been persuading some countries to launch attacks on China. ... So let me say here that, in front of the Chinese side, the United States does not have the qualification to say that it wants to speak to China from a position of strength."<sup>39</sup>*

Yang's remarks about the U.S. echoes the fears of Chinese policymakers who believe that economic conflict and technological decoupling are inevitable. This 'hawkish' camp emphasizes the internal circulation of Dual Circulation and advocates for strengthening national investment in strategic industries so that China can reduce its dependence on the United States.<sup>40</sup> In contrast, 'dovish' policymakers in Beijing who favor external circulation argue that

China must deepen its 'reform and opening up' while avoiding decoupling with the U.S. at all costs.<sup>41</sup>

If U.S.-China relations deteriorate further to the point of a new Cold War, then states caught in the middle may be forced to align into separate camps. This would result in decoupling not only between China and the U.S., but also between Beijing and all of Washington's security allies in the Asia-Pacific. Under this scenario, external circulation would be crippled since most of China's trade, investment, and technology flows are currently shared with its Asian neighbors and the United States. Fortunately for Beijing, U.S.-China competition has thus far only resulted in issue-specific alliances rather than Cold War-style ideological blocs.<sup>42</sup> Most Asian states have adopted hedging strategies to avoid choosing sides and expressed an explicit desire to maintain good relations with both powers.<sup>43</sup> Even so, it would be in Beijing's best interests to ensure that the current trend of issue-specific alliances does not morph into ideological alliances, which is potentially possible if U.S.-China tensions worsen significantly.

## Conclusion

After four decades of uninterrupted export and investment-led growth, China is now renewing efforts to adopt a new development model that prioritizes balanced growth and technological self-sufficiency. Under the Dual Circulation strategy, China will increase consumption-driven domestic demand ("internal circulation") while continuing to expand production for exports and integrating with the global economy ("external circulation"). This paper argues that implementation will be highly difficult in the short term and lays out four major challenges facing the strategy.

First, the two circulations are inherently contradictory. Raising domestic consumption ("internal circulation") likely requires higher

wages, which will inevitably hurt China's export competitiveness ("external circulation"). If Beijing utilizes non-wage-related income transfers, it runs into a second problem. Asking businesses to carry the burden of rebalancing income distribution through corporate donations runs the risk of hurting

pressure from U.S. regulators might spur accelerated domestic Chinese innovation. China will likely be more competitive in future technologies, such as artificial intelligence and quantum computing, where the United States does not enjoy a substantial first-mover advantage. Once it develops

*After four decades of uninterrupted export and investment-led growth, China is now renewing efforts to adopt a new development model that prioritizes balanced growth and technological self-sufficiency.*

the economy and doesn't address the root problem of China's relatively low household share of GDP. Forcing local governments to transfer income to ordinary households would be even more difficult. Third, despite heavy investment, China remains reliant on U.S.-origin technologies in strategic industries such as semiconductors. When Washington tightens export controls and restricts technology transfers, Chinese firms are exposed since domestic producers lag in advanced inputs like 5-nanometer semiconductor chips. Fourth, worsening U.S.-China relations may create an international environment that is not conducive to external circulation and further limit the amount of foreign technology inputs available for Chinese manufacturers to acquire.

China's Dual Circulation strategy will likely fail to achieve its objectives in the short term given the four obstacles this paper has laid out. However, prospects are potentially optimistic in the long run. China's domestic technological innovation capabilities may eventually reach parity with the United States if Beijing continues investing in human capital, strengthening intellectual property rights, and fostering a more innovation-friendly scientific environment in higher education. It could even be speculated that the urgency of an impending technological decoupling and intensifying

the requisite technological capabilities, Beijing will be less vulnerable to U.S. export restrictions and regulatory actions.

Over time, Beijing may also gain more leverage over local governments and bureaucratic agencies as President Xi secures a third term and further consolidates his political position. China's political center can also exert control over the policy implementation process through powerful leading small groups—such as the Central Comprehensively Deepening Reforms Commission—which have rapidly proliferated since 2013.<sup>44</sup> If policy centralization continues after 20th CCP National Congress in November 2022, then transferring income from the public sector to Chinese households to boost domestic consumption may become a less politically challenging task.

During the March 2022 'Two Sessions,' Premier Li Keqiang delivered China's most recent Government Work Report, which highlighted the importance of stimulating domestic consumption.<sup>45</sup> According to the policy document, the 1.5 trillion yuan (RMB) increase in central-to-local transfer payments should be partially used at the grassroots level to promote consumption and expand demand. Although concrete details related to domestic consumption

were sparse, it is clear that Beijing remains engaged in the objectives of Dual Circulation. In a hypothetical long-term scenario, Dual Circulation could succeed if China develops into a global technology leader, overcomes the policy implementation challenges of its 'fragmented authoritarian' system, and continues supporting consumption boosting initiatives at the national level.

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# *Shield or Sword? How Tencent and Facebook Approach Data Privacy Law*

***Emma Shleifer***

## ***Introduction***

Do tech firms use their legal involvement to shield themselves or advance their cause in regulatory debate on data privacy? Specifically, do Chinese tech firms differ from US tech firms in how they conceptualize their relations to their own regulatory environment? Through a case study approach using Tencent and Facebook, this paper develops in three parts. The first section reviews the literature on both private-owned enterprises' (POEs) and Chinese data laws, before the second section deconstructs two assumptions often made about Chinese data laws and offering a brief justification of subject and case studies. The third section examines how Tencent and Facebook attempt to influence the legal landscape of data privacy through three prisms: soft involvement, hard internal involvement, and hard external involvement. Finally, it discusses possible reasons for the two firms' different approaches. Ultimately, it finds Tencent more proactive than Facebook in shaping the law through its greater engagement in legal academic research and self-initiated lawsuits that challenge the legal status quo.

## ***Brief Literature Review***

Until recently, China had limited data privacy laws. From 2013, new legislation emerged to make Beijing's data privacy

laws stronger than what Washington has enacted so far by many measures. While the literature is slowly beginning to do justice to this changing environment, it has yet to delve deeper into the drivers of this change. Examining the influence of POEs on the legal system is further prompted by the literature's assessment of the similarities between Chinese state-owned enterprises (SOEs) and POEs' behavior towards the state and state functions. It is unsurprising that SOEs have long garnered attention for their structure, use, and influence. They are usually powerful, their evolution since 1978 is relatively unusual, and they are easy to conceptualize as potent tools of state. The literature is therefore vocal on the strong institutional influences that SOEs wield on Chinese law and its court system.

However, Milhaupt makes an interesting finding that has yet to translate into deeper research on the influence that large POEs may have on the legal system. Large POEs, he writes, are similar to SOEs in cardinal ways where they would usually differ. Both enjoy similar market access, proximity to and subsidies from the state, and can be called upon to execute policy on behalf of the state. Milhaupt and Zheng (2016) make this comparison to argue that changing the ownership structure without changing how firms rise to the top will not alter the fundamental state-side relationship and rent-seeking behavior they exhibit. Yet even as POEs have emerged as the fraternal twins of SOEs in their behavior towards state functions, few scholars have tried to elucidate POEs' influence on the legal system in the same way that SOEs' legal impacts have been examined.

Considering that SOEs have been known to wield influence on the legal system, and operate in a similar way to POEs, it is reasonable to question whether and how POEs also attempt to shape the law. To begin understanding whether and how Chinese POEs' approach to law differs, this paper takes American POEs as its comparison point. Specifically, it assesses



Tencent and Facebook, both leading online-based POEs.

On the relationship between POEs and the law, both Chinese and English literature splits into two main trends. First, much effort has been expended on detailing specific legal cases, especially on *Tencent v Qihoo* (Fei and Peng, 2014; Walker, May 2017). Second, the literature is also emergent on assessing data privacy laws at the national and enterprise levels. Prior to 2013, China lacked such data laws, and discussion was therefore either dismissed or limited to the conclusion that American and European laws were far superior.<sup>1</sup> The introduction in early 2013 of *The Information Security Technology Guidelines for Personal Information Protection on Public and Commercial Service Information Systems* (China's first, albeit non-binding, national standard on online privacy protection) began to change the analyses.<sup>2</sup> It pushed Chinese laws on data privacy towards what Pernot-Leplay now considers a 'middle-ground' between the EU's GDPR and US privacy laws. More recently, some works have attempted to do justice to the rapid evolution of Chinese data privacy laws, which both Pernot-Leplay and Delinger assert have become more stringent than US laws.<sup>3</sup>

Concerning data privacy laws at the company level, the literature is embryonic, in Chinese, or limited to journalistic assessments. There is a dearth of English-language papers offering a comprehensive overview of Chinese POEs' legal efforts, not to mention comparisons with US POEs with which they rival in size. This paper positions itself within this gap, a building block towards a greater understanding of how Chinese and American online-based POEs attempt to build a legal context on data privacy that is nascent relative to available technology. As an emerging area of law, data privacy is taken as the focus not only because it naturally engenders debates that push existing legal concepts to their limits, but also because it has become a point of intense contention for tech companies whose

services are free precisely because of the data they are able to collect from their user base.<sup>4</sup> As the lifeline yet potential hamartia of tech and a growing number of non-tech companies relying on data analytics, data privacy is at the core of business and is thus an ideal candidate to examine how POEs are involved in the legal debate. As Hoffman and Westin forecasted in the early twenty-first century, privacy concerns are the major determinant of e-enterprise success.<sup>5</sup>

US and Chinese POEs are compared for two main reasons. First, US companies such as Facebook are at the forefront of the data privacy debate. Second, whilst often considered 'behind', China has increasingly strong consumer-oriented data privacy laws, which call for equally serious analysis of its involvement in law. Both the extent to which POEs truly impact the court system, and the strength of companies' privacy policies, lie beyond the scope of this paper. User agreements are often similar and amply examined by Tao (2019) and Ceng (2019). Rather, the paper assesses whether and how large online-based POEs become involved in the legal landscape.

Tencent and Facebook are used as primary case studies because of their size and market importance. Often dubbed as the 'Big Three', Tencent, Alibaba, and Baidu spearhead China's online operations. While Alibaba leads the e-commerce market (far surpassing US-based Amazon), Tencent is a staunch competitor, leading the online games and social networking sectors with QQ and WeChat. In that respect, it is similar to Facebook, both offering services of social networking and communication platforms. Both Tencent and Facebook are also heavily involved in the data privacy discussion.

### ***Analytical Framework***

Tencent and Facebook's involvement in data privacy regulations are examined through three lenses depending on the type of their involvement. First, the 'soft



involvement'. Modelled on the 'soft power' concept, it goes beyond hiring in-house legal experts (although does not exclude it), and concerns whether the company publishes articles relating to or even proposing regulations, whether it has established legal research centers, etc. In short, is the company involved in the regulatory discussion in its most basic form?

The second type, 'Hard internal involvement', is characterized by a larger manpower recruited for the specific purpose of building tangible software, internal "legislation" or policies, in service of the law. However, this type of involvement remains internal to the company, with no or minimal cooperation with the state or government-affiliated agencies. This space is characterized more by innovation within a legal framework than innovation of the legal framework, although the methods developed sometimes may themselves break new legal grounds.

In contrast, 'Hard external involvement', the third category, requires active participation with state functions. This may include proactively filing lawsuits, engaging with the authorities or law enforcement to facilitate the application of existing laws or create new ones. As the firms are here direct legal players, it is their most active form of involvement in the regulatory discussion. The following section will compare Tencent and Facebook's behavior according to these categories.

### ***Mistaken Assumptions?***

Two assumptions are often made about Chinese data privacy laws that are worth addressing. First, the idea that data privacy in China is not assured is inaccurate. Article 40 of the Constitution asserts that 'freedom and privacy of correspondence of Chinese citizens are protected by law.'<sup>6</sup> Privacy in China is assured insofar as a dichotomy exists between privacy from the state and from private actors.<sup>7</sup> As mentioned,

Chinese data privacy laws are stricter than the US in several aspects, including the fact that data on Chinese citizens cannot be stored overseas (although whether this increases the data's security remains in debate). Citizens' right to privacy was further enshrined in the 2002 draft of the Chinese Civil Code, and confirmed in Article 111 of the completed Civil Code passed in May 2020, which states that the 'personal information of natural persons is protected by law' and codifies the collection, use, processing, and transferring of personal data.<sup>8</sup>

Second, it is inaccurate that privacy does not matter to Chinese consumers. In recent years, cases concerning the collection, use, and consent to use consumers' data have increased. Tencent and its competitors have also become more defensive on consumer privacy. In 2018, Tencent publicly denied that it collected user chat history for big-data analysis, a 'rare step', considers Abkowitz, taken after 'a prominent Chinese businessman [had] expressed concern that WeChat messages were read "every single day."'<sup>9</sup> A civil suit in Jiangsu filed in 2018 also concerned user privacy, claiming that Baidu had failed 'to give consumers advance warning' that Baidu apps could 'monitor the user's phone and have access to messages,...and system settings'.<sup>10</sup> The case (dropped when Baidu complied with the plaintiff's demands) did not result in direct legislation but was successful in obtaining the removal of the 'snooping' function from not only Baidu's apps, but also 26 other app developers.<sup>11</sup> Data privacy matters to Chinese consumers, who are also able to demand better data protection and handling methods. The state, its citizens, and POEs are able to influence one another in law.

### ***Soft Involvement***

Tencent takes the lead in 'soft involvement'. It opened the Tencent Cyberlaw Research Center in 2012, simultaneously investing an undisclosed sum into research at partner

institutions such as the Chinese Academy of Social Sciences.<sup>12</sup> A self-proclaimed venture uniting legal practitioners and researchers to improve Chinese Internet law, the Center teems with activity, publishing articles and monthly reports on a wide range of topics covering regions worldwide. Recent papers by the Tencent Legal Research Center demonstrate a keen eye for international trends, covering global trends of Internet governance, examining regulations and new policies ranging from the Vatican's guidelines on AI Ethics to the California Consumer Privacy Act.<sup>13</sup> Reports also indicate that Tencent seeks to remain at the forefront of data privacy innovation, as they clearly identify what still needs to be done with existing legislation. For example, it recently examined the "informed consent rules" and "'Guidelines for Consent of Personal Information Notification", identifying that more should be done to connect it with the "Network Security Law", and 'whether it is legal to exempt informed consent through national standards.'<sup>14</sup>

Notably, the center publishes the Tencent Internet Law News 《腾讯网络法专报》, a monthly special on the evolution of global Internet legal policy that goes beyond simple description by also offering in-depth analyses. Data privacy seems to remain a core issue for Tencent, whose latest report's first section was devoted to new data privacy regulations and the need to protect privacy regulations and cooperation in the context of epidemic prevention and control.<sup>15</sup> Of the eleven most recent articles featured on its center's page, 45.5% deal with data privacy issues (Figure 1).

The Chinese webpage is more developed than its English counterpart, which focuses on intellectual property law, offers shorter articles, and does not provide a monthly report on industry trends. Tencent's official pages Weixin Security Center, Weixin 110, and Tencent 110 also often post numerous articles on network security knowledge for their followers.<sup>16</sup>

In addition to its reader-friendly, bite-sized articles, Tencent's Legal Research Center also publishes research reports. The latest showcases Tencent's position at the forefront of innovative legal research, covering worldwide 'Digital Reform and Regulatory Innovation' in blockchain in 2019.<sup>17</sup> This is the Center's fourth such report.<sup>18</sup> Tencent has adopted a proactive approach, working with universities and regulatory bodies to anticipate rules and shape them too.

Considerable in numbers, most of those powering the legal research center have strong academic backgrounds. Si Xiao (司晓), Chief Editor of Tencent Internet Law Special Report and Dean of the Tencent Research Institute, is an active member of Peking University's law school and has published over thirty academic papers. Tencent co-founder and CEO, Pony Ma, is himself a delegate of the National People's Congress. Attending China's Two Sessions in 2018, he demonstrated Tencent's direct engagement with government functions by submitting a proposal to enact a National Parks Law and beginning several projects (including the conservation advisory group Penguins Love Earth) towards a legal framework for nature conservation.<sup>19</sup> Although Ma's public suggestions are unrelated to data privacy, his involvement gives some indication as to possible broader leverage.

In sharp contrast, Facebook has no advertised legal research centers. Although large in scope and size, Facebook's in-house legal team works primarily towards ensuring that Facebook products are compliant with existing legal frameworks. Unlike Tencent's legal research center, there is little material produced, and virtually none that engages with emerging trends or regulatory analyses. While Tencent delves into legal analyses and provides regular updates for the market as a whole, Facebook appears to engage with the law from a more internal aspect.<sup>20</sup> The Facebook legal team is focused on "getting things done" for the company directly, not necessarily seeking

**Figure 1. Articles listed chronologically from most to least recent (from March 2020 onwards) on Tencent Legal Research Center's webpage, compiled by author.**

	Article Name	Date	Legal Theme
1	《腾讯网络法专报》2020年4月刊 (Tencent Internet Special Law Report, April 2020)	2020-06-04	IP, Network Security, Data Governance, AI
2	七大亮点深度解读:《民法典侵权责任编》网络侵权处理机制 (Highlights of China's Civil Code on handling network infringement)	2020-06-01	China's new Civil Code
3	《民法典人格权编》问世——“健康变色码”能停止异化么? (“Healthy Color Code” in the Civil Code)	2020-05-31	Data privacy
4	五大趋势要注意!全球互联网法律政策2020年第一季度观察 (5 big trends to note! Global internet legal trends in the first quarter of 2020)	2020-05-10	New technical specifications; data protection; network IP; network ecological governance; AI development
5	数据上升为生产要素地位,国外数据政策趋势带给我们哪些启示? (What do global trends tell us about data as a factor of production?)	2020-05-10	Data handling (makes recommendations including strengthening the protection of commercial data)
6	产业分析 艺人商业生态法律观察 (Industry Analysis: Legal overview of the Arts business world)	2020-05-10	Copyright
7	《著作权法》10年后再迎修正案,关注4大新型版权问题 (“Copyright Law” will welcome a new amendment 10 years on, focusing on 4 major new copyright issues)	2020-04-25	Copyright
8	未成年人保护政策制定与行业实践2019年回顾 (A 2019 review on the protection of minors in policy and practice)	2020-04-16	Protection of minors on the Internet
9	《欧洲数据战略》解读:距离单一数据市场还有多远? (Interpreting Europe's data strategy: how far is it from establishing a single data market?)	2020-04-05	EU data laws
10	保护儿童在线隐私与安全——网络服务适龄设计实践守则 (protect children's online safety)	2020-04-03	Protection of minors on the Internet
11	迈向行政规制的个人信息保护:GDPR与CCPA处罚制度比较	2020-03-18	Data protection

to shape the overall legal environment in which it operates.

Yet Facebook's public policy and lobbying teams are active, although more quietly than a publishing research center. Combing through Facebook's lobbying disclosure statements reveals that Facebook spent more than \$12 million in lobbying in both 2018 and 2019 (for comparison, Google spent \$20 million in 2018 and over \$9.5 million in 2019). As seen in the table below, at least five members of the 13-person lobbying team also hold law degrees and legislative background, and nearly all members possess extensive government experience. Its wider public policy team includes influential and experienced figures including Nick Clegg (former British politician now heading Facebook's global affairs), Jennifer Newstead (former top lawyer in Trump's State department who had also helped pass the Patriot Act in 2001, now General Counsel at Facebook), and Kevin Martin (former member of the Bush administration and Chairman of the Federal Communications Commission, now Vice-president of Facebook's US public policy).

Compared to Tencent, Facebook uses lobbying activities as its more prominent tool to regulate the regulatory environment. Aside of its in-house lobbying efforts, Facebook also employs external firms, to a cost of \$3.08 million over 25 companies in the first three quarters of 2020. These are more likely to lobby on data privacy regulations issues: of the 53 quarter reports in 2020, 77.4% were explicitly related to data privacy issues. While the company's in-house lobbying activities have diversified (from nearly 100% discussions focused on data regulations in 2009 to barely 30% in 2020) and become more high-level (focusing on election activities, international affairs, employer responsibilities, and blockchain regulations), the lobbying firms it employs continue to focus the majority of their activities on data regulations.

## ***Hard – Internal Involvement***

Tencent may dominate the scene of 'soft involvement' but both companies fare well when it comes to developing concrete methods of regulations or privacy protection. Notably, the two focus on adopting new software and clearer user agreements. However, this aspect has a stronger impact on the development of security systems to protect personal data from unauthorized infringements, and a weaker effect on the development of data privacy laws.

On the technical aspect, both firms are heavily investing in developing better security systems for their users' data. Arguably, this is Facebook's primary method of engagement for privacy issues. Its research center boasts of an interdisciplinary team of security and privacy researchers spanning 'software engineering, ...spam-prevention, and detecting and responding to new online threats.' As far as open source research could reveal, legal experts are not included. Facebook's primary focus is on protecting accounts from malware and developing secure communication channels: technical rather than legal approaches. Tencent follows a similar model in terms of developing new software for better data protection. The Tencent United Security Laboratory provides security products and architecture across big data, AI, and the Internet.<sup>21</sup>

Both companies are also focused on making their user agreements clearer, a recognized barrier to better privacy laws. Tencent and Facebook's privacy policies (in both English and Chinese in Tencent's case) are similar in what they offer to their user. Tencent's privacy policy is the longest of China's Big 3's (Tencent, Alibaba, and Baidu), being almost double that of Alibaba's. According to Tao, its policy is also the best of the three, as it uses societal, technological, and organizational mechanisms for better data protection. In contrast, he notes, Alibaba and Baidu's privacy policies 'were barely satisfactory', although all can

Figure 2. Key figures working at the Tencent Legal Research Institute

Name	Function	Notable Achievement
张钦坤 (Zhang Qinkun)	Secretary General of Tencent Research Institute	Executive Editor of Tencent Internet Law Special Report
司晓 (Si Xiao)	Dean of Tencent Research Institute, General Manager of the Public Strategy Research Department of Tencent Group, General Manager of the Legal Policy Research Department	Chief Editor of Tencent Internet Law Special Report
曹建峰 (Cao Jianfeng)	Senior Researcher, Tencent Research Institute	Authored over twelve research papers
朱开鑫 (Zhu Kaixin)	Postdoctoral researcher at Tencent Research Institute (Data protection and Data competition laws)	Assistant researcher at the Law Institute of Chinese Academy of Social Sciences, visiting scholar at Boston University
余潜倩 (Yu Qianqian)	Team member of Tencent Legal Research Center	Master of Social Policy from the London School of Economics
彭宏洁 (Peng Hongjie)	Deputy Secretary-General of Legal Research Center	Authored over 20 academic papers, including two on personal data protection.
柳雁军 (Liu Yanjun)	Secretary General of Tencent Legal Research Center	Long experience in civil & commercial trials
王融 (Wang Rong)	Senior Expert of Tencent Research Institute	Data privacy expert; author of 50+ academic papers and books. Former deputy director of the Internet Law Center of the China Academy of Information and Communications Technology.
查晓刚 (Cha Xiaogang)	Senior Expert of Tencent Research Institute	Government roles in foreign policy, including overseas
蔡雄山 (Cai Xiongshan)	Deputy Director and Chief Researcher of the Legal Research Center of Tencent Research Institute	Various government roles and distinguished expert of the "Cyberspace International Governance Research Base" of the Ministry of Education; National Cyberspace Administration Expert of Peking University Internet Development Research Center. Visiting scholar at Yale University. Chief Editor of multiple academic journals and books

**Figure 3. Key figures of Facebook's Public Policy team that also compose its 2020 lobbying team**

Name	Function	Education	Government Experience
Greg Maurer	Vice president	Political Science	–
Brian Rice	Director of Public Policy (accompanied Zuckerberg to Congressional hearing in 2018; tasked with corralling Democrat backing)	English	Yes (including legislative assistant to John Kerry for 3 years, 2006-2009)
Myriah Jordan	Public Policy (tasked with corralling Republican support)	JD (University of Texas)	Yes (including General Counsel for Sen Richard Burr, 2009-2011; Special Assistant to the President for Policy, 2006-200)
Chris Herndon	Director of Public Policy	JD (George Washington University)	Yes (including counsel to Republican representatives)
Sandra Luff	Director of Executive Branch of Public Policy	–	Yes (including legislative director of Jeff Sessions's Senate office)
Chris Randle	Government Affairs	JD (Howard University)	Yes
Zuraya Tapia-Hadley	Public Policy Manager	LLM	No (but former Vice President of Public Affairs at UPS)
Nkechi Iheme	Public Policy	MA in Legislative Affairs	–
Sydney Paul	Public Policy manager	JD (St Mary's University School of Law)	Yes (Counsel to Democrat senators)
Caitlin O'Neill	Director of US Public Policy	–	Yes (worked under Nancy Pelosi)
Courtney Templ	US Public Policy	Political Science	Yes (legislative experience in government)
Joshua Althouse	Public Policy manager	MPA	Yes (worked under Nancy Pelosi)
Ritika Robertson	Public Policy manager	JD (University of Alabama)	Yes (including Chief of Staff House of Representatives; Legal fellow under Jeff Sessions)

improve their Fair Information practices and considerations of transborder data flows.<sup>22</sup> Tencent's policy remains comparable to Facebook's, however. Whilst Facebook's version uses perhaps more reader-friendly language and easy-to-access sections, both firms clearly lay out what data they collect, how, and why. In its Chinese and English versions, Tencent further adds that users should be careful about 'what information they post and communicate through our service'.<sup>23</sup> Clearly, both firms are seeking to make their user agreements more readable. Facebook founder Mark Zuckerberg himself has been a vocal advocate for adopting reader-friendly guidelines on data collection and handling. Privacy agreements, he argued, are often verbose and obscure when they should be implemented instead 'in a way where people can actually understand it'.<sup>24</sup> Chen Fang (deputy director of the Chinese Institute of Security's Data Security research department) agrees that unclear user agreements can impede the development of privacy laws, not least because they prevent users from being aware of their rights or breaches

state functions relating to law. It self-initiates lawsuits relating to data privacy laws when Facebook does not, and it is more proactive in cooperating with law enforcement agencies and courts.

### ***Tencent as the proactive plaintiff vs. Facebook as the passive defendant***

The first key differentiator is how Tencent actively initiates disputes that push legal development, whereas Facebook has the bulk of its legal cases thrust upon it. Tencent is actively involved in lawsuits that push existing legislation further by incorporating the data privacy element. In 2011, Tencent proactively challenged in court a common industry practice whereby competitors in the Internet industry could adopt the questionable marketing strategy of attacking one another's security problems for which they would then 'deliver remedial software'.<sup>25</sup> This tactic is not unique to Chinese Internet POEs: Microsoft has in the past attacked Google's data security on similar grounds.<sup>26</sup> However, in the Chinese case, Tencent filed a lawsuit with the Guangdong

*Although large in scope and size, Facebook's in-house legal team works primarily towards ensuring that Facebook products are compliant with existing legal frameworks. Unlike Tencent's legal research center, there is little material produced, and virtually none that engages with emerging trends or regulatory analyses.*

thereof. Simplifying privacy clauses and improving their quality is a fundamental step towards developing data privacy laws, and one which both Tencent and Facebook have been willing to take.

### ***Hard – External Involvement***

While Facebook is similarly involved in driving better internal data privacy regulations, Tencent once again takes the lead in its involvement with external agencies and

High Court in 2011. The case was the result of a series of escalation tactics begun in September 2010 when Tencent offered an upgraded version of the security software 'QQ Doctor', which had similar functions to the 360 Safe Guard software developed by competitor Qihoo. Qihoo immediately countered by insinuating that Tencent was secretly looking at its users' private files and data without first obtaining their consent. After several rounds of retaliation, the China's Ministry of Industry and Information Technology ordered the parties to restore



the interoperability of their apps and services. Tencent filed its case a few months later, which helped develop the legal field. Following Qihoo's appeal, the case moved to the Supreme People's Court, whose ruling confirmed the legality of earning revenue through value-added services or advertisements in order to provide users with free software.<sup>27</sup> The court also recognized a fine line between 'legal technological innovation and unfair interference with the business of competitors.'<sup>28</sup> The importance of the case, proactively filed by Tencent, is reinforced by its inclusion as a Guiding Case in 2017.<sup>29</sup>

Thus, Tencent is involved not only in data privacy itself but also in how the issue can be used by competitors to attack one another. This is something that Facebook

facial data without their informed consent.<sup>30</sup> In another lawsuit, private citizens alleged that Facebook routinely scanned the content of its users' private messages for advertisement purposes.<sup>31</sup> Not only was it another externally-initiated case, but Facebook relied once more for its defense on the technicality of assessing harm suffered by plaintiffs of data privacy breaches (which usually result in high emotional but negligible monetary damage due to the difficulty to assess value of personal data). The firm applauded the Northern California district court's ruling to exclude the award of any monetary damages. Many companies, Facebook included, have often argued that suing over violations of a consumer privacy law should not be possible if concrete harms like financial losses cannot be

*Compared to Tencent, Facebook uses lobbying activities as its more prominent tool to regulate the regulatory environment.*

has not done (yet). At most, it has had cases filed against it, and almost exclusively on its practice of acquiring emerging competitors, rather than its handling of user data.

It is sometimes assumed that the American side of the debate is centered primarily on state-citizen interactions. While it is true that Facebook and its fellow tech companies have usually resisted loosening their encryption methods to facilitate state access to citizens' data, there has also been a strong push from private citizens against Facebook's data privacy approach. Most recently, Facebook agreed to settle for \$550 million in a class-action lawsuit filed by Illinois residents over the firm's use of facial recognition technology, which the plaintiffs claimed 'violated an Illinois biometric privacy law by harvesting' users'

proved. This allows Facebook and its competitors to avoid prickly questions and thus stay on the margins of the development of national data privacy regulations. The problem that a challenge to this position would pose is illustrated by the Illinois Supreme Court's increasingly numerous rulings that 'that violating a person's biometric privacy could constitute a harm in and of itself'.<sup>32</sup>

However, it must be pointed out that Tencent has adopted a similar approach to cases filed against it exclusively on the grounds of data privacy breaches. Unlike the US, China does not have a class action system, which makes compensation through civil litigation more difficult. Zhao claims that the few civil cases render equally few relevant and up-to-date judgements that could be used as templates for future legal challenges on

data privacy. While rights can be violated, they often do not result in a loss. Individuals are hard-pressed to show evidence of loss that would require compensation. Unfortunately, Tao writes, privacy policies are usually designed for privacy litigation risks than the fair handling of data.

Nevertheless, despite strong privacy advocacy at work in the US, such cases remain relatively few. More salient for Facebook are cases launched over the freedom of expression, such as the 2016 *Force v. Facebook* in which an Israel-based family claimed that Facebook had 'knowingly hosted accounts belonging to Hamas'.<sup>33</sup> Facebook's main defense (that websites could not be sued for user-created content under Section 230 of the Communications Decency Act) upheld legal status quo insofar as it did not push for the creation of new or adapted regulations. This was ultimately supported by the Supreme Court who rejected the case in May 2020.<sup>34</sup>

### ***Cooperation with law enforcement***

The second comparison point is Tencent's more proactive cooperation with law enforcement agencies and courts. At its basic core, this means allowing for the personal engagement of its senior employees in state functions. In a telling example, Zhao Ranran, Tencent's senior expert in data privacy compliance, helped draft the 2018 national Specification on data privacy protection.<sup>35</sup> In contrast, the US Congress has been criticized (notably since the Cambridge Analytica scandal of 2018) for its lack of technological awareness. While former government officials have joined Facebook's workforce, the reverse has not been true.

Moreover, Tencent has developed its own centers to help law enforcement agencies with criminal cases (such as Lingkun, a big data financial security platform developed by the Tencent Anti-Fraud Lab, which alert authorities in real time of online criminal groups), and officially seeks to reposition

itself as a digital assistant for all industries and law enforcement functions.<sup>36</sup> Meanwhile, in the US, other companies than Facebook have emerged as the partners of law enforcement agencies (most notably Clearview AI, which works with Federal and state law enforcement departments to identify criminals in record time with facial recognition technology).<sup>37</sup>

## ***Discussion***

### ***Are Tencent and Facebook's different approaches the result of their environment?***

It is possible that a closer relationship with the government has enabled Chinese POEs like Tencent to be more proactively involved in law. The state has launched numerous initiatives in partnership with Tencent and Alibaba to address social issues, including mini-programs on WeChat and Alipay begun in June 2019 to provide users with access to 200 government services, including those relating to the judicial system.<sup>38</sup> Similarly in 2018, the Chinese Ministry of Human Resources and Social Security had authorized WeChat Pay and Alipay as channels for social security expenses. The latest cooperation effort, in November 2019, goes even further, integrating WeChat and Alipay with China's national health insurance. The wide user adoption of these two platforms is a strong impetus: aside from convenience, partnering with Tencent and Alibaba gives the state access to data that Cortese suggests can be leveraged 'to create better informed algorithms to efficiently manage the country's massive population' and ensure state functions are adequately prepared to weather future developments.<sup>39</sup>

Facebook's engagement with state functions is less salient. At times, the White House has attempted to call for the company's help in solving criminal cases or lawsuits, in a similar way that the Federal Bureau of Investigation (FBI) has often (unsuccessfully) tried to ask for Apple's

cooperation to access password-protected, encrypted material. Facebook has also highlighted on numerous occasions that it volunteers data analyses to relief agencies and organizations. Overall however, US state systems have remained separated from private companies.

However, it is inaccurate to interpret this as a simple case of Chinese POEs being able to influence data privacy laws however they see fit, or of the state imposing its own vision. On the contrary, China's data privacy laws are rapidly strengthening and gaining in clarity (the latest Network Security Law regroups provisions on personal data protection previously scattered across regulations).<sup>40</sup> In contrast, the US relies on the industry's self-regulation. Under Obama, individual's control over companies' collection of their data was promoted in a proposed Consumer Privacy Bill of Rights that has yet to pass into law. Thus, US companies have somewhat more flexibility when collecting user data than their Chinese counterparts. China has been

development, in which companies are encouraged to participate.

Facebook and Tencent were born in fundamentally different environments. With laws still in development and the country's economy essentially coming of age with the Internet, Tencent can afford to act more proactively in a yet unsettled legal environment. Facebook has arguably little incentive to change the favorable legal status quo. Most relevant legal precedents were decided in its favor before the company had come into existence. The US's Privacy Act dates from 1974, predating the modern computer, and new laws have been slow to appear: California did not pass its new privacy law until 2018. Section 230 of the 1996 Communications Decency Act is a salient example of how upholding the status quo benefits Facebook. Classifying neither provider nor user of an Internet service as a publisher, it has let social media platforms like Facebook largely off the hook for controversial content published on its site. Growing up in an environment

*China's data privacy laws are rapidly strengthening and gaining in clarity (the latest Network Security Law regroups provisions on personal data protection previously scattered across regulations). In contrast, the US relies on the industry's self-regulation.*

developing stricter regulations on data privacy protection against which companies are judged. In 2018, China's Cyber Security Coordination Bureau asserted that Alipay's collection and use of personal information violated the 'Personal Information Protection Initiative' it had recently signed.<sup>41</sup> The bureau was adamant that users' data privacy should be protected, and Alipay was required to do more to protect users' right to know and right to choose how their data were being collected. Data privacy laws in China are a complex discussion in constant

that allowed it to grow with little regulations, Facebook's aim is not to add a new law but to keep the one already in place and already in its favor. Congressional gridlock demonstrates Facebook's reactivity (arguing against new bills or changes to existing laws).

Though eager to maintain the status quo, Facebook has sought since the Cambridge Analytica scandal to stay ahead of changes policymakers have begun to promise their public. Attempting to retake the reigns of

its own narrative, the company published a new white paper in July 2020 on 'Communicating About Privacy'. Calling for 'policy co-creation' between businesses and government that would avoid constraining privacy laws, Facebook pushes its existing lobbying practices into a more public eye. Having launched a prototype 'sandbox' between government and businesses in Singapore (the Trust, Transparency and Control Labs) that it hopes to extend to the US, Facebook's approach seems proactive.

data has become a currency-like product, 'exchanged for access to online content and services without monetary payment'.<sup>42</sup> In this regard, Tencent has more leeway to adopt a high-profile approach, as its revenue base is more diversified (originating more from membership, online gaming, etc., than ads, which constitute less than 20% of revenue). Recently, Tencent has also been experimenting with a paywall for content on WeChat where users could pay per article, thereby encouraging content

*Data privacy laws in China are a complex discussion in constant development, in which companies are encouraged to participate.*

In an interview with Protocol, Facebook's deputy chief privacy officer Robert Sherman also articulated Facebook's vision for consistent federal standards on privacy approaches. Yet once again, it has done this in response to a real PR problem at the public level and anticipated complications from its strings of data privacy scandals at the policy level. Sherman similarly expressed that Facebook today invests 'really aggressively in addressing' its past mistakes on data privacy. In other words, Facebook has begun to be openly proactive in its reactivity to possibly unfavorable changes to the regulatory status quo.

### ***A matter of perspective?***

The difference in Tencent and Facebook's approach to shaping data privacy laws could be explained by their revenue streams. Basing an overwhelming majority of its revenues on ads makes Facebook's handling of user data more questionable and thus more vulnerable to attack, as it is more likely to be explicitly profit-driven. As the OECD indicated in a 2013 report, user

quality and further diversifying its revenue stream away from data-based sources like ads.<sup>43</sup> The reliance on data-based sources of revenue could be constraining Facebook's involvement in data privacy law, while facilitating Tencent's proactive actions. It is unconvincing that diversified revenue streams diminish the firm's interest in privacy law, as personal data continues to be collected even when offerings include membership or online gaming. However, the space in which to act may be expanded, as third parties are less likely to be involved and direct commercialization of users' data may be less prevalent than is the case with ads.

More than a matter of revenue stream, Tencent's greater legal involvement may also be the result of unclear regulations. Chinese laws have a propensity (albeit waning in recent years) for vagueness resulting in too-numerous interpretations. Companies often have to clarify rules with regulators directly, and finding the relevant answer can be difficult, requiring manpower and high legal acumen. Overall, China's personal information protection remains in

development. Some data controllers have not yet formulated or published an accurate and detailed privacy clause. However, this is not unique to China. Countries round the world, including most prominently the US, struggle with unclear data privacy laws. In particular, the US lacks a federal approach, leaving a gap that states are beginning to fill unevenly.

Facebook's data privacy problem came to the fore in 2018 when it was revealed that UK-based Cambridge Analytica had harvested the data of millions of Facebook users without their consent for political advertising purposes. In the ensuing

issues in which data privacy is involved. However, it is worth considering whether Facebook's involvement, while more reactive due to its already favorable regulatory environment, may be more effective.

This paper made two contributions against the common grain of debate on Chinese and US tech firms' approach to data privacy. First, it provided a detailed comparison and discussion of the regulatory environments in which they operate in, also compiling both quantitative and qualitative original data on the firms' lobbying and legal efforts.

Second, it delineated the mechanisms

*Tencent and Facebook are both leaving deep footprints in the development of data privacy laws.*

trials, a lambasted Zuckerberg claimed that he would welcome more regulations on all tech companies dealing with data. Although a prominent trial, it was not revolutionary: as with previous trials, Facebook was called as a defendant, and it did not result in sweeping regulatory changes to data privacy protection.

## **Conclusion**

Overall, Tencent and Facebook are both leaving deep footprints in the development of data privacy laws. Facebook adopts a more internal, commercially-driven approach of solving *compliance* issues with a more recent turn to open cooperation with government. In contrast, Tencent favors a more trend-setting, even academic behavior that not only seeks compliance for its products and services but also attempts to contribute to the development of legal

that allowed Tencent to be more proactive than Facebook in shaping the regulatory environment, but it did not explain why Tencent chose to be more proactive. Considering that Tencent has not been as hard-hit as Alibaba in China's 2020/2021 tech crackdowns, it is possible that Tencent's motivation to be proactively involved in the regulatory debate was to ensure a mutually beneficial cooperation relationship with regulatory bodies. However, this is purely speculative and requires further research. Indeed, this paper has sought to compare the firms' proactiveness in regulatory debates but comparing their engagements' overall proactiveness remains an area for further research. Moreover, more systematic research is needed on other tech firms' involvement in data privacy laws, through their lobbying, publication, or community actions. It would be beneficial to examine more deeply which types of regulations firms target and in

which direction. Regardless, the development of data privacy laws requires the participation, willing or forced, of its largest commercial players.

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